

Tennessee State Supreme Court File

Solomon Koonce v. Whit Koonce, et. al. & Solomon Koonce v. S. H. Burnett et. al.

Year: 1927

County: Crockett

Cause/Crime: Fraudulence/Conveyance

Case Description: Consolidated cases. Additional defendants are S. H. Burnett and S. A. Booth in first case and Jim Walker and S. A. Booth in the second case. Solomon Koonce was noted as being a colored man 97 years old, a former slave of Isaac Koonce. Solomon notes the land was given to him by Isaac Koonce. Solomon claims that the defendants in both cases fraudulently created debt on the land and altered the deed for the purpose of taking the land from Solomon. Housed in 2 folders.

254 pages

EIGHTH CHANCERY DIVISION
T. C. RYE, CHANCELLOR

COURT MEETS IN ALAMO FOURTH MONDAY
IN MAY AND NOVEMBER

CROCKETT CHANCERY COURT

J. C. W. NUNN, CLERK AND MASTER

J. D. DODSON, DEPUTY

ALAMO, TENN.,

Aug 16

1927

Kingbett

Jackson Tenn

Mr Sir:

In Reply to yours of aug

11th Will say that I talked to Mr

Smith Saturday about this cost

and he assured me he would

pay in Nov. This has been

done on farm

and me it would be

stated. If could wait

to wait

I N D E X

OF

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H0H9E

I624 and I625

SOLOMAN KOONCE

VS.

WHIT KOONCE, S. H. BURNETT AND S.A. BOOTH TRUSTEE.

AND

SOLAMON KOONCE VS. S.H.BURNETT, JIM WALKER AND S.A. BOOTH

These two cases were by consent of all parties consolidated
and heard to gether ^{on} the same facts by the chancellor
and ~~agree to~~ the cases in the sameway in the

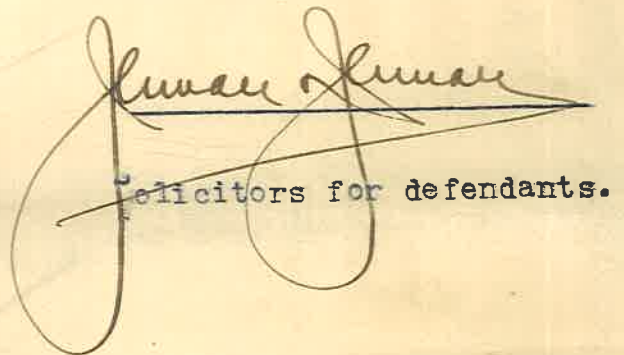
Court of civil appeals, on the one bill of e xceptions and a

all questions of fact and law be heard as one case.

This the 6th day of January 1926.



solicitor for compl. imats



solicitors for defendants.

No.1624 Solomon Koonce,

Vs

Whit Koonce, S.H. Burnett & S.A. Booth, Trustee.

No.1625 Solomon Koonce

Vs

S.H. Burnett, Jim Walker & S.A. Booth, Trustee.

CONSOLIDATED CASES.

By consent of all the parties these two cases were consolidated and heard together, as the two suits relate to the same matter, and by consent of all the parties the two cases were heard together before Tom C. Rye, Chancellor upon the pleadings, exhibits and oral evidence in open Court on the first day of December 1925 it being one of the term days of the November Term of Court 1925.

BILL OF EXCEPTIONS.

On the trial of these cases the following proceedings were had.
No.1624 Complainant read the original bill and exhibits thereto:

To the Honorable Tom C. Rye, Chancellor, presiding and holding the Chancery Court at Alamo, Tennessee.

Solomon Koonce, a resident and citizen of Crockett County, Tenn.
Complainant.

Vs.

Sam H. Burnett, S.A. Booth, Whit Koonce all citizens and residents of Crockett County, Tenn.

And the Bank of Alamo Tenn., a banking corporation with its principal place of business at Alamo, Crockett County, Tenn.
Defendants.

Complainant would respectfully show to the Court, that he is a colored man abouty ninety seven years old and was a slave of Isaac Koonce until his freedom. A few years after the emancipation of Lincoln, his old master gave him

numbered and far

which was

il Dist

Complainant took possession, commenced clearing and improving the same, raised a large family of children and gave them some education, and as they married off he would settle them about on the farm and set them up to housekeeping, and continued until he reduced his acreage to about ninety five acres.

That when the defendant Whit Koonce and his daughter Annie who married Jim Walker married, he settled them on a part of the land, but made them no deeds and charged them rent, which with his other income was ample to support and keep him and his wife Cherry Koonce in comfortable circumstances without work; in fact they were not able to do much work by this time, because of their ages.

That neither him nor his wife had any education whatever.

2nd.

Complainant would further show to the Court that his old master owned several hundred acres of land, had no children, that he took his neice, then about ten years old to raise and educate, who later married Thomas Burnett, a neighbor boy known to complainant since his birth, who lived in half a mile of said Isaac Koonce and after their marriage they lived with said Koonce until his death, and in the meantime the defendant Sam H. Burnett was born and the old man gave said Burnett and wife about four hundred acres of land adjoining the land given to complainant which they built on and moved to and the complainant and said Burnett family was as friendly and neighborly as it was usual and customary for colored and white families to be under like circumstances.

Complainant would further show that he counsel with and relied on said Thomas Burnett as long as he lived in all business ~~transac~~ ~~actions~~ matters, and after his death, which occurred about sixteen years ago, then the complainant went to and relied on defendant Sam H. Burnett as legal advisor and confidential friend in all matters, as he was an educated and shrewd man; thinking he would not take any advantage of the complainants ignorance and illiteracy.

Your Honor, that

year of 1919 the defendant Sam H. Burnett began to talk with and advise the complainant to give up his farming business and dispose of his land; that he was getting too old and that he could arrange to get all the money he and his wife needed to live on and they had done enough hard work and it was now time for them to live on easy street, that he would have enough income to live on as long as "you and Aunt Cherry lives", so he said, these are his words and when complainant asked him how it could be done, the said Burnett replied, you let me have it fixed like I tell you and it will be all O.K. Thereupon the complainant told him to go ahead and fix it right he said "Uncle Sol" you know I will do right. He said deed your land to Whit and Jim Walker, but make them support you and Aunt Cherry as long as you live and that will keep people from trying to take it away, like Ike Revell did old Uncle Isaac (meaning Isaac Koonce). Complainant believing said Burnett was his friend and relying on him for counsel and advice as to the best thing to do told him to go ahead and have it fixed up. So said Burnett had the said Jim Walker (who had moved to Carroll County) to come down and make arrangements for complainant and his wife Cherry and his son the defendant Whit Koonce and said Jim Walker all to go to Maury City to get Esq. J.M. Neal to write the deeds and note for the amount the said Whit and Jim Walker was to pay each year as long as complainant and wife lived. When they got to Maury City the defendant Burnett told Esq. Neal what they wanted and while said Neal was writing the pretended deeds for the complainant and his wife Cherry to sign, the defendant Sam H. Burnett wrote a note or an agreement for the said Whit Koonce and said Jim Walker to sign, promising to pay the complainant four hundred dollars each year as long as complainant and wife lived, to be equally divided between the said Walker and Koonce, that is two hundred a piece. The complainant insisted all

the time he would not sign any deed or other paper that would take away his right to the land before his death, and they all assured him that the deed as written and especially the defendant Sam H. Burnett told him to sign the deed and if they failed to pay him his four hundred dollars any year then the land would go back to complainant be his, and having confidence in and relying on what said Burnett said to be true he signed the deed or paper that Esq. Neal wrote. Said deed as they call it, shows on its face that it was a gift to Whit Koonce for the consideration of one dollar, and the further consideration mentioned in said deed that complainant and his wife Cherry Koonce retained the right and title to said land for their support as long as they lived and burial expenses, complainant states that there is no land set out and described in said deed, it does not give the State or County where the land is, they are talking about and said pretended deed is void for uncertainty, and in fact no land described, but it reads as follows: begining at Jim Walkers N.E. corner and runs East $33\frac{1}{2}$ rods; thence North 216 rods; thence West $35\frac{1}{2}$ rods; thence North 216 rods to the beining containing $47\frac{7}{8}$ acres more or less. Said lines when traced out, shows there is no land inbraced in said calls, and he charges said deed is void in law and in fact. A certified copy of said deed and a plat of said land is hereto attached, marked exhibit A and prayed to be made a part of this bill but not to be copied unless demanded by the defendants. The note or agreement that said Burnett wrote hereinbefore mentioned, reads as follows.

" This article of agreement between Whit Koonce and Jim Walker is to pay to Solomon Koonce and his wife Cherry Koonce the sum of (\$400.00) Four Hundred Dollars equally divided between us as their support from year to year as long as they live and after meeting all expenses Doctor bills and burial expenses if any personal property is left it is to be equally divided between us.

Signed: Whit Koonce

Jim Walker

The original paper will be offered as evidence on the

trial of this cause for complainant.

Complainant, states that after the said Whit Koonce and Jim Walker signed said above mentioned paper, the defendant Sam H. Burnett gave it to him with instructions not to let any body have it.

Complainant would further state to the Court that said Burnett told him that he and his wife Cherry was to stay with his son Whit half of the time and his daughter Annie Walker wife of said Jim Walker the other half of the time, that they would charge no board and it would be their home.

Complainant would further show to the Court, the defendant Whit Koonce has not complied with said contract; that he has not paid no part of the said \$200.00 per year, paid no Doctors bills, bought no clothing and footed no other expenses as per contract, except one pair of pants which cost two dollars, and now fails and refuses to make any effort to comply with any part of said contract, herein before set out and described which was the consideration promised if the deed was made, marked exhibit "A" to this bill.

That before this arrangement was made said defendant paid about one hundred seventy five dollars per year rent, but has paid none since; although he has lived on and cultivated the land ever since.

Complainant would further show to the Court, that said tract of land set out or mentioned in the pretended deed to his son Whit is reasonable worth four thousand dollars, that he is now old, not able to work, has nothing to live on, and now in the office of his lawyer almost barefooted, the weather cold and raining and no money to buy him a pair of shoes or provisions or meet his necessary expenses.

Complainant would further show to the Court, that the defendant Sam H. Burnett who planed and worked up the scheme to have the complainant and his wife to convey or attempt to convey to his son Whit and said Jim Walker their land, on the same day represented to his son Whit and said son in law Jim Walker, that the complainant owed him Burnett larke sum of money, and people would be jumping on him now, and that they must convey to him the land or secure the debt

that the old man owed him by mortgage by a mortgage on the same, and had the defendant Whit Koonce and his wife to make a deed of trust to the said S.A. Booth as trustee to secure his debt that the old man (Solomon) owed him which he said divided between him and Walker would be near Twenty five hundred dollars each, and it must be secured by a deed of trust on said land and he put \$2504.90 on Whit's tract, and they acknowledged the same before said Neal and the said Burnett had it recorded the next day in the registers office in Alamo, trust deed book H.H. page 401 and 402, a certified copy is hereto attached marked Exhibit "D" and prayed to be made a part of this bill but not to be copied unless demanded by defendants. Complainant states and charges said deed of trust is null and void in law and in fact.

Complainant states on information, that said Burnett transferred said note to the defendant Bank of Alamo on the 5th day of May 1924, the defendant S.A. Booth as trustee sold said land at the Court House at Alamo, Tennessee, to said S.H. Burnett at the alleged price of \$2470.00 cash and said Booth as trustee made said Burnett a deed to said land which was recorded the same day in deed Book 5, page 70 a copy of said deed will be filed as evidence on or before the hearing.

After said sale, the defendant Burnett come into the field where the complainant was with some work hands and wanted complainant to go with him to Alamo to fix up some papers about the land, but did not say what kind of papers, if he would do so he would pay him eight and one third dollars per month as long as he lived, but complainant refused and in a few days defendant Burnett sent his son over to see if he would go, and if he would he would fix up the house and pay him some money besides, complainant still refused to make the trip with them.

Complainant states and shows unto your Honor that he never did in his life owe or was in any way indebted to the said Burnett as much as fifty ^{dollars} and the little debts he had in early life owed the defendant has long since been paid.

That he is reliably informed and so believes the fact to be and charges that neither the said Whit Koonce nor Jim Walker ever in

any way owed or was in any way liable to said Burnett at any one time as much as twenty five dollars and that they did not at the time the transaction herein set forth in reference to the transfer of said lands owe him any thing.

He would further show to the Court that the defendant S.A.Booth is near neighbor and a close friend to the defendant Burnett, and is always ready to aid him in any of his schemes as he did in this one.

Complainant would further show to the Court, that at the time he Burnett took the two mortgages herein referred to from Whit Koonce and Jim Walker and for several years before was heavily in debt had a large part of his land under mortgage for \$4300.00 borrowed money, besides indebtedness, which he still owes; whether he is indebted to insolvency the complainant is not advised but he does state and charge that he had no surplus money at the time the said Whit Koonce and Jim Walker gave his said mortgages.

Complainant state and charges as follows, that he is entitled to have said pretended deed, mortgage or paper whatever it may be called that J.M.Neal wrote on the 28th of April 1920, pretending to convey some interest in the 47 and 7-8 acres of land described in said paper to Whit Koonce declared null and void and set aside and that all the right, title and interest in said S.H.Burnett and defendant S.A.Booth and Whit Koonce be divested out of them and the same vested in the complainant, and that he be restored to peaceful possession of same, that the cloud on his title be removed or if he is not entitled to this specific relief, then, he charges that he is justly entitled to a decree against defendants for two hundred dollars for each year with interest on the note of agreement signed by said Whit Koonce and Jim Walker herein set out and described and a lien declared on said land to satisfy said decree.

Complainant charges, that the defendant S.H.Burnett, planned, concocted, schemed and worked up the plan herein set out to cheat, defraud, and fraudulent beat the complainant out of his land, both tracts being reasonably worth eight thousand dollars. That he was sick,

weak in mind and body and was overreached by said Burnett and induced to sign said deeds when he was incapacitated to contract and said Burnett knew it.

That the defendant Burnett had no just claim of any kind against complainant for which he or his land was liable for.

That neither Whit Koonce nor Jim Walker was in any way justly indebted to said Burnett or liable to him in any manner at the time he procured the said deeds of trust to be made to the defendant S.A.Booth for his use and benefit on said 47 and 7-8 acres of land to secure the said \$2504.90.

That the defendant Burnett is now paling and fraudulently scheming to wrongfully get possession of said 47 and 7/8 acres mentioned in said deed and to get the complainant and the defendant Whit Koonce off said farm, in order he may get possession and control of it and will do so unless restrained by proper orders from your Honor.

He further states and charges on information and belief, that the defendant S.H.Burnett will sell and convey or dispose of said land if not enjoined from doing so by your Honor for he is about to fraudulently dispose of said land.

Complainant, states unto your Honor, as soon, as he learned of the facts herein stated, he immediately took steps to institute suit for recovery of his property and to have the cloud removed from his land title.

He would further show and charge, that the alleged consideration for said land was grossly inadequate and should be set aside for that reason

Premises considered, complainant prays:

1st.

That all the parties named in the caption as defendants be made such; that copy of bill and subpoena issue requiring each of them to answer first rule day and answer each and every allegation in said bill, giving dates, amounts, times and places, but oaths to their answer is waived.

2nd.

That the States writ of attachment issue and be levied on the 47 7/8 acres of land set out and described in exhibit A to the bill.

3rd.

10 That an injunction issue prohibiting the defendants Sam H. Burnett, Jim Walker and S.A. Booth from going on said land described in exhibit A or in any way interfering with the peaceful possession of the complainant or the defendant Whit Koonce, or any of the tenants on said farm, or from selling, transferring or in any manner disposing of said property, or interfering with the complainant in any manner, directly or indirectly.

4th.

That complainant have a decree, setting aside said pretended deed from said complainant and ^{his} ~~life~~ and marked exhibit A to the bill to the defendant Whit Koonce for the 47 and seven eights acres, declaring the same to be a fraud on complainant and be ordered to be delivered to complainant and that all the right, title and interest if any that is vested in the defendants or any of them be divested out of them and reinvested in the complainant, and the cloud upon his title be removed, that he be restored to peaceful possession of said land of said land and have a decree for reasonable rents against the defendants from the 28th day of April 1920 with interest and damages to said place.

If complainant is not entitled to said relief, then he prays for a decree on the note or agreement set out and described for the \$400.00 per year with interest, doctors bills and clothing that

was agreed to be furnished to complainant and a lien be declared on said land to secure the same and it sold to satisfy the same.

5th.

That the defendant Sam H. Burnett set out in his answer the date of his alledged note of \$2504.90 by whom was it executed and for what purpose, the time and place and who was present, how long had he had it in his possession on the 28th day of April 1920. When and for what did he ~~endorse~~ endorse it to the Bank of Alamo. How much had been paid on it and by whom. When and where did he get the \$2470.00 cash that he claimed he paid to S.A. Booth on the 5th day of May 1924 for said land. That he file said old note with the Clerk and Master for inspection by the Court.

6th.

11 That the Bank answer fully where and for what did defendant Burnett transfer said note herein mentioned, by whom was each signed and how paid.

I, Solomon Koonce, do hereby solemnly swear, that owing to my poverty I am not able to give cost, attachment and injunction bond in this case, nor bear the expenses of said suit, that I am justly entitled to the redress sought to the best of my knowledge and belief.

7th.

That this is the first application for attachment and injunction in this case.

Complainant prays for such other, further ^{and} general relief as he may be entitled to under the facts of this case.

Solomon Koonce

By W.F. Poston, Atty.

W.F. Poston. Solicitor.

State of Tennessee

Crockett County.

Personally appeared before the undersigned, the complainant Solomon Koonce and made oath in due form of law that the statements, allegation and charges made in the foregoing bill are true. This the 4th day of December 1924.

His
Solomon X Koonce
Mark

Sworn to and subscribed before me this the 4th day of December
1924.

I.N.Lemond, Clerk

By E.L.Lemond Deputy Clerk.

To the Clerk and Master of the Chancery Court at Alamo, Tenn.

You will file the foregoing bill and issue the writ of
attachment and injunction as prayed for without bonds, as
complainant has taken the paupers oath as prescribed for poor per-
sons.

This the 8th day of December 1924.

R.K.Taylor, County Judge.

Filed December 9th, 1924 at
8:17 o'clock, a.m.
Doyle Henderson
C.M.

H.K. DeLong, County Judge.

Under the 24th day of December 1924.

sons.

complaint has taken the benefits over as prescribed for poor bel-
attachment and injunction as prescribed for marriage bonds.

Don will file the foregoing bill and take the writ of
to the clerk and master of the chancery court at Vicksburg, Miss.

By E.T. Gering Deputy Clerk.

I.H. Gering, Clerk

1924.

Sworn to and subscribed before me this 24th day of December

KNOW ALL MEN BY THESE PRESENTS: That we, Solomon Koonce and Cherry Koonce, of Crockett County, Tenn., for an in consideration of One dollar in hand paid, and the further consideration herein mentioned, Property, to Whit Koonce. But said Solomon Koonce and wife Cherry Koonce., retains a natural life title to said land for their support during their natural life and for their burail expenses. Have this day, bargained and sold and by by these presents bargain, sell, alien and convey unto Whit Koonce of Crockett County, Tenn., his heirs and assigns forever, all our right, title and interest in and to a certain tract of land, and bounded as follows, to-wit: Begining at Jim Walkers N.E. corner, with Elm and Sweet Gum pointers runs East $33\frac{1}{2}$ rods to J.H. Cleeks west boundary line; thence North with Cleeks and S.H. Burnetts west boundary line 216 rods to A.P. Moore's N.E. corner; thence with A.P. Moore's North boundary line $35\frac{1}{2}$ rods to Jim Walkers south east corner on A.P. Moore's North boundary line; thence North 216 rods to the begining, containing 46 $\frac{7}{8}$ acres more or less.

To have and to hold the said tract of land with all improvements, tenements, hereditaments, rights, privelges and appurtenances there unto belonging to the said Whit Koonce. his heirs and assigns forever.

We, covenant with the said Whit Koonce, that we are lawfully seized of said land, have a good right to convey same., and it is unencumbered.

We further covenant with the said Whit Koonce., that we will forever warrant and defend the title to the said land, to his heirs and assigns against the lawful claims of all persons whomsoever.

In witness whereof we hereunto subscribe our names, on this the 28th day of April 1920.

his
Solomon X Koonce
mark.

Her
Cherry X Koonce
Mark.

State of Tennessee
Crockett County.

Personally appeared before me J.M.Neal, Notary Public of said County, the within named Solomon Koonce and wife Cherry Koonce, the bargainors, with whom I am personally acquainted and who acknowledged, that they executed, the within attached instrument for the purposes therein contained, and Cherry Koonce wife of said Solomon Koonce, having personally appeared before me privately and ~~XX~~ apart from her husband, the said Cherry Koonce, acknowledged the execution of the said instrument to have been done by her, freely, voluntarily and understandingly, without compulsion or constraint from her husband, and for the purpose therein expressed.

Witness my hand and notarial seal at office in Maury City, Tenn., this the 28th day of April 1920.

SEAL)

J.M.Neal, Notary Public.

14 Filed for record May, 13th, 1920 at 11 O'clock A.M. and so noted in Minute Book, No. 4, page 342-343.

I, F.H. Evans Register of Crockett County, certify this to be a true copy of the instrument Recorded in Deed Book No. at page 22, records in register's office, for Crockett County, At Alamo, Tennessee.

This Dec. 6th, 1924.

F.J.Evans, Register.

Handwritten: Original of 10-18-13

Exhibit "a" to Complainant's
Bill.

J. J. Evans, Register.

APR 1884.

Witness.

ss. records in register, a office for clockwork company, the copy of the instrument recorded in deed book no. 1 of page 1. J. J. Evans Register of clockwork company, certified this to be a

in minute book no. 1 of page 182-183.

Filed for record May 1st 1884 at 11 o'clock A.M. and so noted
(SNT) J. J. Evans, Notary Public.

this the 28th day of April 1884.

Witness my hand and notarial seal at office in Henry City, Tenn.,
from per signing and for the purpose therein expressed.

consequently and undeliberately without consultation or consent
execution of the said instrument to have been done by per, freely,
about from per signing, the said special license, acknowledged the
possession license, relating hereto, and before the Notary and in
presence of the said company, and special license wife of said
company, that they executed the within attested instrument for
the purpose, with whom I am personally acquainted and who acknowledged the within named possession license and wife special license,
before me J. J. Evans, Notary Public of said

Know all men by these presents that we, Whit Koonce and wife Mable Koonce of Crockett County for and in the consideration of One Dollar cash to us paid, the receipt of which is hereby expressly acknowledged, and other consideration hereinafter mentioned, have this day bargained, sold and by these presents bargain, sell, alien and convey unto S.A. Booth, Trustee, of Crockett County, heirs and assigns forever.

All our right, title and interest in and to a certain tract of land and bounded as follows, to wit:

15
Beginning at Jim Walker's N.E. Corner with Elm and Sweet Gum pointers runs east $33\frac{1}{2}$ rods to J.H. Cleek's West boundary line, thence; with J.H. Cleek's and S.H. Burnetts west boundary line 216 rods to A.P. Moores N.E. corner; thence west with A.P. Moores North boundary $35\frac{1}{2}$ rods to Jim Walkers S.E. corner on A.P. Moores North boundary line; thence North 216 rods to beginning, containing $\frac{4}{6}$ $\frac{7}{8}$ acres more or less.

To have and to hold the said tract of land, with all improvements tenements, hereditaments, rights, privileges and appurtenances thereunto belonging to the said Whit Koonce heirs and assigns forever.

We covenant with the said S.A. Booth, trustee that we are lawfully seized ~~and possess~~ of said tract of land, have a good right to convey same and that it is unincumbered, we further covenant with the said S.A. Booth, trustee that we will forever warrant and defend the title to the said tract of land to the said S.A. Booth, trustee his heirs and assigns, against the lawful claims of all persons whomsoever.

This being the same property purchased by me of Solomon Koonce, on the 28th day of April 1920, deed found of record in Deed Book No page; ; ; ; .

But this sale and conveyance is made and executed, for the following uses and trusts and none other to-wit:

We are indebted to S.H. Burnett in the sum of Twenty Five Hundred and Four & 90/100 dollars, and desire to make certain (by the execution of this mortgage) the payment ~~thereof~~ thereof.

Now therefore if we shall pay or cause to be paid to the said S.H.Burnett the aforesaid indebtedness and the cost of making and excuting this trust by or before the 15th day of Nov. 1920, then this conveyance shall be void, and of no further force and effect, held:

But if we fail to pay or cause to be paid, the said S.H. Burnett the aforesaid debt and all accrued interest and cost of this trust, as aforesaid on or before the 15th day of Nov. 1920 the the said trustee and Mortgagee S.A. Booth, without taking oath or making bond, may take ^{immediate} possession of the property herein conveyed, and proceed to sell the same at public auction for cash, after advertising, by written or printed hand bill, the time, place and terms of said sale, and he shall apply the proceeds of said sale when so made to the payment, first of the cost of making and
16 executing, this mortgage, and the payment of the aforesaid indebtedness and any accrued interest thereon, and the remainder, if any to me or my order, in case any sale is made under the terms of and provisions of this mortgage, we hereby waive and relinquish all right of redemption and homestead, dower and that title to this purchaser may be absolute.

In witness whereof, we, hereunto affix our names on this the 28th day of April 1920.

Whit Koonce

Mable Koonce.

State of Tennessee,
Crockett County.

Personally appeared before me J.M. Neal notary public of said County, the within named Whit Koonce and Mable Koonce, the barganors with whom I am personally acquainted and who acknowledged that they executed, the attached instrument for the purposes therein contained, and Mable Koonce wife of said Whit Koonce having personally appeared before me privately and apart from her husband the said Mable Koonce, acknowledged, the execution of said instrument to have been done by her freely, volentarily and understandingly, without compulsion or constraint from her husband, and for

the purposes therein expressed.

Witness my hand and notarial seal at office in Maury City,
Tenn., this 28th day of April 1920.

(SEAL)

J.M.Neal, Notary Public.

Filed for record 4/29/1920 at 5 O'clock P.M. so noted in Minute
Book No.4, pages 340 & 341.

F.J.Evans Register.

I, F.J.Evans Register of Crockett County, certify this to be a
true copy of the instrument recorded in Trust Deed Record Book
"HH" at page 401 and 402.

Records Registers Office at Alamo, Crockett County, Tenn.

This 6th day of Dec. 1924.

F.J.Evans, Register.

17

*certified true and correct
at Maury City, Tenn.
F. J. Evans*

*made out by me
F. J. Evans
at Maury City, Tenn.
Dec. 6, 1924*

Filed Dec. 9th, 1924, at 8:17 0'
clock, a. m.
Boyle, Indiana
com.

Exhibit 'B' to
Complaints Bill

E. J. Evans, Register.

Beats 2nd day of Dec. 1924.

Records Register's Office at Adams, Crockett County, Tenn.

and at date 401 and 402.

the copy of the instrument recorded in Adams Deed Record Book

I, E. J. Evans, Register of Crockett County, certify this to be a

E. J. Evans, Register.

Book No. 4, pages 240 & 241.

Filed for record 4/25/1920 at 2 o'clock P. M. so noted in minutes

(SEAL)

J. M. West, County Clerk.

Tenn., this 28th day of April 1920.

Witness my hand and notarial seal at Adams in Henry State,

the purposes hereby expressed.

State of Tennessee

CHANCERY COURT AT ALAMO

To the Sheriff of Crockett County—Greeting:

Summon ~~Whit Koonce~~, S.H. Burnett and S.A. Booth, Jim Walker

to appear before the Chancery Court at Alamo, on or before the Third Monday of December next, to answer the original attachment & injunction bill which Solomon Koonce

has filed in said Court against Whit Koonce, S.H. Burnett and S.A. Booth and have you then and there this writ.

Witness Doyle Henderson, Clerk and Master of our said Court, at office in Alamo, this 9th day of December, 1924.

Doyle Henderson.

Clerk and Master.

By

Deputy C. and M.

NOTICE

To the above Named Defendant

You are hereby notified that you are required to make defense in this case on or before the Monday of, or judgment pro confesso will be entered against you on the Monday of, 1924.

Clerk and Master,

By

Deputy C. and M.

Came to hand 10th day of December, 1924 Executed as

commanded, and left a copy of the bill with Whit Koonce

and a copy of this Subpoena to answer with each adult Defendant.

This December 10th, 1924.

J.C. McLean, Sheriff.

NOTICE

No. 1624.

Crockett County Chancery Court

Subpoena to Answer at Rules

IN CHANCERY AT

Alamo, Tennessee.

Solomon Koonce

VS.

Whit Koonce, et als.

Issued this 9th day
of December, 1924.

Doyle Henderson,
Clerk and Master.

Deputy C. and M.

STATE OF TENNESSEE

To the Sheriff of Crockett County—Greeting:

To S.H. Burnett, Whit Koonce and S.A. Booth

_____, and to your Counsellors, Attorneys,
Solicitors, and Agents, and each and every one of them, Greeting:

Whereas, It having been represented to us, in our Court of Chancery at Alamo in a certain suit between_____

Solomon Koonce

_____, Complainant _____, and

S.H. Burnett, S.A. Booth and Whit Koonce

Defendant _____, on the part of said Complainant _____, that _____ he _____ has _____ obtained
from Honorable R.K. Taylor, County Judge, Gibson, Tenn. _____ an order for this Writ of
Injunction to issue, enjoining S.H. Burnett, S.A. Booth and Whit Koonce from going
on the land described in the bill exhibit A that complainant deeded
to Jim Walker 28th day of April 1920, or ~~xx~~ interfering with the
peaceful possession of the same by complainant, or with Whit Koonce
or with any of the tenants on the said farm from selling or any manner
disposing of the same directly or indirectly.

19

all as more fully set out in Complainant's Bill, to which reference is here made:

We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said parties above named, and all and every person before mentioned, under the penalty prescribed by law, of your and each of your goods, lands, and tenements to be levied to our use, that you and each of you do absolutely desist from doing, or attempting to do, any of the acts hereinbefore specified as enjoined until hearing of this cause in our said Court of Chancery.

Witness, DOYLE HENDERSON, Clerk and Master of said Court, at office, Fourth the

Fourth Monday in November, 192 4.

Doyle Henderson

Clerk and Master.

By _____

D. C. and M.

Executing by the reading the within injunction to S.H.
Burnett, S.A. Booth and Whit Koonce. This the 10th day of Dec. 1924.

J.W. Mc Lean, Sheriff.

No. 1624
IN CHANCERY
Solomon Koonce
vs.
Whit Koonce, et als.
IN JUNCTION
Issued ~~XXXXXX~~ Dec 9th, 1924.
Doyle Henderson. Clerk and Master.
By Deputy Clerk & Master.
CAME TO HAND
192
Solicitor for Complainant.

STATE OF TENNESSEE

To the Sheriff of Crockett County—Greeting:

Whereas, Solomon Koonce

Complainant, ha S lately filed a sworn Bill of Complaint in the Chancery Court at Alamo against Whit Koonce, S.H. Burnett and S.A. Heath

Defendant S, and charging therein that Defendant are justly indebted to Solomon Koonce in the sum of \$1600.00 or more Dollars, due by account respectively, and alleging
(State here nature of debt.)
that they are about to fraudulent dispose of property
(Here state the cause of attachment.)

in which Complainant ha S prayed and obtained from the Honorable R.K. Taylor County Judge, Gibson County a fiat ordering a Writ of Attachment to issue to attach the property specified in said Bill of Complaint, and said Complainant having given bond and security as required by said order granting said attachment:

These are, therefore, to command you to attach the estate of the said Jim Walker

and particularly
20 forty six and seven eight acres of land that Solomon Koonce and wife conveyde to Jim Walker 28th day of April 1920, begining at the S.W. corner of a tract of a five acre tract deeded to Charlie Koonce runs thence east 33 1/2 rods, south 216 rods to A.P. Moore north boudary line; thence west 35 1/2 rods to Charlie Koonce south east corner; thence north 216 rods to the begining, containing 46-7/8 acres more or less

or so much thereof as shall be of value sufficient to satisfy the debt and claim of Complainant, being \$1600.00 or more

and the costs of this suit. And you will keep said property safely, so that you may have the same at the next term of said Court to be held for the County of Crockett at the Courthouse in the town of Alamo, on the Fourth Monday May next, to answer such orders and decrees as the Court may make in relation thereto, unless the said Defendant S shall replevy the same out of your possession, by giving bond with good security in double the value of said property, conditioned to keep the same in the jurisdiction of the Court, and to have said property at all times forthcoming to answer such orders and decrees as the Court may make in the case. And you will make due and legal return of how you have executed this writ.

Witness, DOYLE HENDERSON, Clerk and Master of our said Court, at office in Alamo, the Fourth Monday in November, A. D., 192 4.

Doyle Henderson

, Clerk and Master

, Deputy C. and M.

No. 1624.

IN CHANCERY

Solomon Koonce

VERSUS

Whit Koonce, et als.

ATTACHMENT

Issued 9th day of

December, 1924.

Doyle Henderson,
Clerk and Master.

Solicitor for Complainant.

Executed by levying this attachment on 47 7/8 acres of land that Solomon Koonce deeded to Whit Koonce on 28th day of April 1920, in the eight Civil District of Crockett County, Tennessee known as the Whit Koonce place and bounded as follows;commencing N.E.corner of J,m Walkers place and runs east 33 $\frac{1}{2}$ rods thence north 216 rods; thence west 35 $\frac{1}{2}$ rods;thence South 216 rods to the begining.Containing 47 7/8 acres more or less.This 10th day of December 1924.

J.C.McLena, Sheriff

Solomon Koonce,

No.1624.

Vs.

In Chancery Court at Alamo.

Whit Koonce, et als.

ANSWER OF S.H.BURNETT ONE OF THE DEFENDANTS.

S.H.Burnett one of the defendants in the above styled cause, for answer to the bill of Solomon Koonce says:

1.

Defendant admits that at one time the complainant was owner of about 250 acres of land lying in the 8th civil district of Crockett County, Tenn., said lands as alledged in the bill, were a gift from complainant's former owner Isaac Koonce.

It is also true that prior to the time of the execution of the deeds to the defendant Whit Koonce and Jim Walker April 28th, 1920 complainant had deeded all of said 250 acres except about 95 or 100 acres to certain of his children.

The allegations contained in the 3rd paragraph of the bill that "About 1919 the defendant Sam H. Burnett Began to talk with complainant and advise him to give up his farming and dispose of his land" is not true.

For quite a number of years prior to said date the complainant had not been engaged in the farming business further than to rent his land; he was too feeble and had been for years, to do manual labor. From the time Jim Walker married complainant's daughter Annie in 1905 until the year 1918 or 1919, he, Jim Walker had cultivated the west half of the farm at least the west portion of the place and for this land Jim Walker paid the complainant rent every year he lived on the place.

The complainant and the defendant Whit Koonce and the latter's family lived on the eastern portion of the farm and was supposed to pay rent also, but according to the statements of the

complainant, he did not pay any rent whatever.

As a result of his inability to work, giving off most of his land to his children and getting rent for only the part that Walker cultivated, the complainant for years prior to the date referred to by complainant 1919, he had been getting deeper in debt each year. If, as alledged in the bill, this defendant in 1919, had wanted to take some advantage of complainant by which defendant should become the owner of his land or in any way to be benifited by a conveyance of his land, defendant did not have to resort to the methods hinted at in the bill, but could have by foreclosure of a mortgage held by this defendant to secure a debt of \$1500.00 several years past due, accomplished the purpose without any scheme or plot.

22 Not only is it true that at the date referred to, 1919 the complainant owed this defendant a debt of \$1500.00 with interest for about six years, but in addition to this debt complainant owed this defendant other debts which added to the mortgage debt and interest, amounted to about \$4000.00 at the time of the execution of the deeds to defendants Whit Koonce and Jim Walker. The complainant as he states, is very old, very feeble and uneducated, and when he states in the bill that he was not indebted to this defendant when these deeds were executed, he might be excused on the ground that his memory is poor and that his mind is at fault; but in as much as this \$1500.00 and one prior thereto, on this land, was of record in the Registers office of Crockett County, all these years, this defendant is at loss to understand why such an allegation should have been made. But be the reason what it May, the allegation is absolutely untrue.

This defendant admits that not only in 1919, just before and at the time these deed were executed, but for many years prior thereto, and on many, many occasions, the complainant talked and advised with this defendant about his, complainants condition and about what he owed this defendant. Be it said in justice of the complainant that the cause of indebtedness was not due to extravagance on the part

of himself and wife, but it was due to several things. As stated before, he only received so he said, rent on that part of the land cultivated by Jim Walker; complainant, his wife and his son Whit Koonce lived together, as defendant understands, as one family, and the rents received from Jim Walker were not sufficient to support the family; and further, the son Whit to say the least, has never been successful as a farmer, ~~the son Whit~~ produces very little in the way of crops. Then, another cause of becoming involved in debt was the liberality of complainant toward certain of his children. As the proof will show, a very large part of what the complainant owed this defendant at the time the deeds to Jim Walker and Whit Koonce were executed, and which debts were assumed by these vendees was incurred for the benefit of complainant's children. The complainant frequently said to this defendant, that outside of a living for himself and wife, he wanted his children to get the benefit of his land, after his debts were paid.

23

This defendant admits that it was he who suggested to the complainant, when the latter asked how his debts could be paid and at the same time complainant and his wife be secured in support, the arrangement carried out in conveying the land to Jim Walker and Whit Koonce. If there is anything fraudulent or unfair or in the least degree inequitable, in the arrangement, as the same appears in the face of the deeds and in the written agreement signed by the said Whit Koonce and Jim Walker, this defendant is unable to see it.

Certain it is that it was not so intended or construed by defendant.

The land was at the time, worth the debts due defendant from the complainant; as stated above, \$1500.00 of the indebtedness, with interest for about six years, was secured by mortgage on the land; the remainder of the indebtedness could have been easily reduced to a judgment and execution levied on the land; so, there was, as can be seen, no occasion for this defendant to advise or persuade the complainant to get rid of the land for the benefit of this defendant, and he did not do so.

24

After telling the complainant, how, in the opinion of the defendant, the matters could be arranged so that he would no longer be bothered about the payment of his debts, and how at the same time he and his aged wife could be made secure in a support the remainder of their lives, provided the arrangements met the approval of the said Whit Koonce and Jim Walker, who were to assume the payments of said debts, he expressed a willingness to carry out the plan by executing deeds. The other parties interested were consulted and agreed to accept the transfer on the conditions stated; that is they, Whit Koonce and Jim Walker were to assume the debts of complainant to this defendant, which with interest added to the following fall, amounted to \$4478.85; of this sum Jim Walker was to assume the payment of \$1973.95 and Whit Koonce was to assume the payment of \$2504.90. Each of these parties were to execute a mortgage to their respective parcels of land to secure the payment of the amount each was to pay; it being agreed on the part of this defendant that he would not expect them to pay the amount in one year, but would give such extensions from time to time as was necessary; provided of course, the interest was paid annually. All the parties understood as the deeds show, that the land, both parcels, were to be bound for a support for complainant and his wife during their lives and for burial expenses when they died. Defendant admits that he wrote the agreement signed by the said Whit Koonce and Jim Walker stating that the amount of the support should be \$400.00 yearly during the lives of complainant and his wife; it being considered that the sum of \$200.00 for each of them would furnish them a comfortable living, each of the vendees were to pay an equal share of this yearly sum. This writing was executed as defendant recalls, at the suggestion of Jim Walker who said it should be understood what amount each of them was to pay. Defendant admits that after this agreement had been signed he gave it to the complainant and, while he does not recall just what was said to him at that time, it is probable that defendant told him to take care of it.

The allegation of the bill to the effect that this defendant persuaded or influenced the complainant to execute said deeds is untrue. The whole matter was discussed with the complainant fully, before the deeds were executed or written, the land was run off by a surveyor in accordance with the agreement and instructions of the complainant and the vendees, and after this, by agreement of all the parties, they went to Maury City and had Mr. J. M. Neal to do the writing; the complainant and his wife signed and acknowledged the deeds of their own free will and accord and without being influenced by this defendant or any one else so far as defendant knows.

THE VALUE OF THE LAND CONVEYED.

25 At the time of these conveyances, this 95 acres of land in its then condition, if the buyer got immediate possession and the land was unencumbered, was worth something like sixty or sixty-five dollars per acre cash; on payments say one third cash and the remainder in one and two years it would have sold for possibly seventy dollars per acre; with an incumbrance of \$400.00 per during the lives of the grantors of course the land was not worth this sum.

However, the valuation of the land was a matter between the complainant and the parties who were taking the conveyances; defendant considered the land good security for his debt against the complainant and therefore, he would not have agreed to release the complainant and look to the vendees of the land without they agreed to pay defendant's debt and secure same with the land, further than this, defendant had no interest in the price to be paid for the land.

This defendant understood when he accepted the mortgage on said land to secure his debts, that while before these conveyances he had a first mortgage on the land, when he agreed to the term upon which it was conveyed to the said Whit Koonce and Jim Walker, these mortgages became secondary to the lien for the support of the complainant and his wife; defendant agreed to this, not because it

was to his interest to do so, but because he did not want to foreclose his mortgage or do anything that would work a hardship on this old couple whom he had known all his life, and whom he at all times had befriended when asked to do so; this is how it came about that the complainant got in defendant's debt from year to year.

26 This defendant does not know to what extent the said Jim Walker and Whit Koonce have carried out their obligation relative to supporting complainant and his wife, except from what has been told him. Defendant knows this to be true however: Jim Walker moved on the lands deeded to him by complainant the first part of the year 1921, as soon as he did so the complainant and his wife went to the home of the said Jim Walker to live; complainant's wife was very feeble and apparently unable to wait on herself. This defendant went to see these old people frequently while they were in the home of Jim Walker, and from what he could see while there and from what he was told by the complainant and by his wife, Jim Walker and his wife, were kind, considerate and very attentive to these old people. As defendant now recalls, complainant's wife lived about two years after going to the home of Jim Walker; maybe a month or two less than two years, and this defendant thinks he is perfectly safe in saying that during that time the complainant and his wife were well supported and given every attention necessary to their comfort.

The times defendant was at Jim Walker's while the complainant and his wife were living there, the latter was always in her room and usually on the bed. He never saw her out of the house. Apparently she was extremely feeble and had to be cared for and attended to as if she were a little child. At all times when defendant was present Jim Walker and his wife were as attentive to this old woman as it were possible for them to be; and she said to defendant and to others in his presence, that Annie and Jim were awfully good to her. The complainant also said to defendant frequently while he

27 he was living with Jim Walker and after he left there, that Jim and Annie were good to him. It was not until complainant left the home of Jim Walker and went to live at Whits that defendant ever heard any complaint from the complainant about the treatment he was receiving. He said to this defendant on several occasions that he was not being treated right by Whit and his family. The complainant would not say anything about his ill treatment or how he was neglected when any of Whit's family were present. On one occasion when defendant went to see the complainant while he was at Whit's, after assuring himself no one was present except defendant, complainant said to defendant "Burnett I need some money". On being asked how much he needed he replied five dollars; defendant gave him the amount requested and he put it under his pillow; but before doing so, he looked around, seemingly to be sure no one saw him. Not only once, but a number of times, this defendant told the complainant that if he would make his home with some of his other children, that defendant would see that his board was paid; that he would see to it that the amount due him for a support should be paid every month; defendant further said to the complainant, if he did not want to live with Jim Walker or some of his other children, that defendant would provide him a house near defendant's home and see to it that complainant was properly taken care of. The defendant Whit Koonce however, has never seemed to like the idea of his father going elsewhere to make his home, he, Whit, had been in possession of the land every since it was deeded to him and had paid practically nothing for the privilege. He paid no part of the \$2504.00 due this defendant except he paid interest for one year. He has not so much as paid the taxes on the land for the last three years. This was the main reason the Bank of Alamo the owner by assignment, of Whit's note of \$2504.00 foreclosed the trust deed.

He has not only failed to pay any part of his debt and allowed the taxes to become delinquent, but he has not taken care of the

land;and by reason of his failure to properly keep up the place it was not worth as much by several hundred dollars as it was when it was deeded to him in 1920.

Defendant states on information and belief that the said Whit Koonce and not his father,instigated the institution of the present suit.Evidently,his idea and purpose was and is,to hold possession of the land through the claims of his father.

Defendant does not hesitate to say that if defendant Whit Koonce had discharged his obligation as well as Jim Walker and his wife, there would be no cause for complaint on the part of the complainant.

28 All allegations contained in the bill,charging either directly or indirectly,that this defendant has at any time in any way, mistreated the complainant,or tried to take advantage of him either in connection with the transfer of his land or in any way whatever,which have not been specifically denied are now denied generally.

FORECLOSURE OF THE WHIT KOONCE MORTGAGE.

Defendant admits that he assigned the note of \$2504.00 executed to him by the co-defendant Whit Koonce,to the Bank of Alamo,and he admits that said Bank as it had a right to do,requested the trustee S.A.Booth to foreclose the trust-deed executed to secure said note.

The trust-deed executed by the defendant Whit Koonce and his wife to secure said note is filed herewith(certified copy) marked for identification,Exhibit "A" and prayed to be taken as a part hereof. In compliance with the request of the legal holder of said note, the trustee, S.A.Booth,on May 5th,1924,foreclosed said trust-deed by a sale of said land in accordance with the provisions of said trust-deed Exhibit "A" and this defendant became the purchaser at the trustees sale,whereupon the trustee executed to defendant a deed to said land.A certified copy of said deed is filed as a part of this answer and prayed to be taken as a part hereof;said deed is marked for identification,Exhibit "B".

The defendant Whit Koonce is in possession of said land, and this defendant has reason to believe on reliable information, that he does not intend to surrender possession of the land to this defendant unless and until, he is compelled to do so by decree of Court.

ERROR IN DESCRIPTION OF LAND DEEDED TO WHIT KOONCE.

Complainant insists that because of an error in the description of the land, intended to be conveyed by the complainant to defendant Whit Koonce on April 28th, 1920, no title passed to the said Whit Koonce and therefore, the latter having no title could not convey any title to the trustee Booth.

Defendant admits that there is an error committed by the draftsman of said deed in describing said land as will be explained, but defendant denies the allegation that because of this error no title passed from complainant to the said Whit Koonce.

The correct description of the land is as follows:

Lying in the 8th Civil District of Crockett County, Tenn., beginning at the N.E. corner of Jim Walker's land Elm and Sweet Gum pointers, and runs thence east $33\frac{1}{2}$ poles to Cleek's west boundary line; thence south with J.H. Cleek's and S.H. Burnett's west boundary line, 216 rods to A.P. Moore's N.E. corner; thence west with A.P. Moore's north boundary line $35\frac{1}{2}$ rods to Jim Walker's S.E. corner; thence North 216 rods to the beginning; containing 46-7/8 acres.

The difference in the description contained in the deed and the correct description given above is this.

The second call is: " Thence NORTH, with the west boundary of J. H. Cleek and S. H. Burnett" when in the correct description this call is " South " with west boundary of Burnett and Cleek.

If, in the second call running north instead of south as it should be, there was no other lines or monuments given, there might be some ground for the claim that the description is fatally defective, but this is not the case.

It will be seen by the examination of a map filed herewith, marked Exhibit No. 3, showing the Whit Koonce tract of land, the Jim Walker tract and the Cleek and A.P. Moore tracts, that it would be impossible to run north from the point at the end of the first call and at the same time run with the west boundary lines of J.H. Cleek and S.H. Burnett. It would also be impossible to run north from the point mentioned and run to A.P. Moore's N.E. corner. So that, while if the call to run north stood alone without further description or calling for other lines or corners the land could not perhaps be identified, but with the other lines and corners given, this is no difficulty whatever, in determining just what land was intended to be conveyed. The error is simply a clerical error of the draftsman and all the parties to the conveyance fully understood where the land was located; that it was the eastern half of the Solomon Koonce 95 acres.

30.

All the parties to the transaction were familiar with not only this tract of land but were and are familiar with the adjoining tracts of J.H. Cleek, S.H. Burnett and A.P. Moore and knew where the corners were located that were called for in running these lines.

Defendant shows further that same error that was made in the deed from the complainant to defendant Whit Koonce was also made in the trust-deed executed by the said Whit Koonce and wife to this defendant. In other words, the description as given in the first deed was followed in the other conveyance.

And now having fully answered the bill, the defendant files this his answer as a cross bill, and the premises considered, prays:
1st. That subpoena to answer issue, requiring the complainant, Solomon Koonce and the defendant Whit Koonce to answer this cross bill; but their oath to their answer is waived.

2nd. That the deed executed by the complainant Solomon Koonce to the defendant Whit Koonce on April 28th, 1920, exhibit "A" to original bill, the trust deed executed by Whit Koonce to S.A. Booth on same date (Ex. _____ to original bill and Exhibit _____ ~~to answer~~

3

That the defendant be placed in possession of said land by orders of this Honorable Court.

German and German.
Sols.

S.H.Burnett makes oath before me that the facts sated in his foregoing answer and cross bill are true of his own knowledge except those shown to be made on information and belief and those statements are believed to be true.

Sworn to and subscribed before me
This Dec.31st..1924.

Clerk and Master.

Filed Dec 31st, 1924.
Doyle Henderson
et al.

Clerk and Master.

Doyle Henderson.

This Dec. 27th, 1924.

Sworn to and subscribed before me

S. H. Whitsett.

and those statements are believed to be true.

I judge except those sworn to be made on information and belief
in the foregoing answer and cross bill are true of the own know-

S. H. Whitsett makes only before me that the facts stated
Crockett County.

State of Tennessee.

Doyle.

Witness my hand and seal.

and the proof.

and hereby certify as he may be entitled to under the foregoing
aff. That this cross complaint be granted and other matters
of this Honorable Court.

That the defendant be placed in possession of said land and orders
original bill and Ex. _____ to cross bill.

S. H. Whitsett by S. V. Booth, trustee on May 24th, 1924, Ex. _____ to
the said writ license under and by virtue of the deed to defendant
this defendant to possession of said tract of land as against
Ex. That a decree be entered herein, declaring the rights of
plaintiffs set out.

conform to certain boundaries of said 40-1/2 acres of land as
shown, a most boundary line, thence. So as to make description
"South" for the word "North" immediately following the words "to S. H.
this answer: that is, correct said deed by substituting the word
as as to properly describe said tract of land as set out in
bill and Exhibit _____ to answer and cross bill be corrected
this defendant on May 24th, 1924 being Exhibit _____ to original
to cross bill) and the deed executed by S. V. Booth, trustee, to

State of Tennessee

CHANCERY COURT AT ALAMO

To the Sheriff of Crockett County—Greeting:

Summon Solomon Koonce and Whit Koonce

to appear before the Chancery Court at Alamo, on or before the Third Monday of January next, to answer the Bross bill which S.H. Burnett ha. S. filed in said Court against Solomon Koonce and Whit Koonce and have you then and there this writ.

Witness Doyle Henderson, Clerk and Master of our said Court, at office in Alamo, this 3rd day of January, 192 5.

Doyle Henderson

Clerk and Master.

By _____

Deputy C. and M.

NOTICE

To the above Named Defendant _____

You are hereby notified that you are required to make defense in this case on or before the _____ Monday of _____, or judgment pro confesso will be entered against you on the _____ Monday of _____, 192 _____.

Clerk and Master,

By _____

Deputy C. and M.

Came to hand.....day of....., 192..... Executed as

commanded, and left a copy of the bill with.....

and a copy of this Subpoena to answer with each adult Defendant,

I accept service of the within subpoena. This the 3rd day of Jan. 1925.

W.F. Poston,
Sol. for Solomon Koonce.

NOTICE

No. 1624

Crockett County Chancery Court

Subpoena to Answer at Rules

IN CHANCERY AT

Alamo, Tenn.

Solomon Koonce
vs.

Whit Koonce, et als.

Issued this 3rd day
of Jan., 1925.

Doyle Henderson
Clerk and Master.

Deputy C. and M.

Solomon Koonce,

Vs.

No.1624.

Whit Koonce et als.

ANSWER OF S.A.BOOOTH.

S.A.Booth one of the defendants in the above styled cause for answer to the bill filed herein by Solomon Koonce says:

Defendant admits that he is named as trustee in a conveyance executed by Whit Koonce and wife on April 28th,1920,a copy of which trust deed is filed as Exhibit "B" to original bill.

As shown on its face this conveyance was in trust to secure a note in favor of S.H.Burnett.

Subsequently long after the maturity of the debt to secure which said ~~trust~~ deed was executed,this defendant,by request of the legal holder of said debt foreclosed said trust by sale of the lands conveyed,when the defendant S.H.Burnett became the purchaser and the defendant as trustee executed to him a deed.

Defendant was not even consulted about being named as trustee in said conveyance and had no interest whatever in the matter. Defendant knew nothing whatever about the alledged dealings between the complainant,Whit Koonce and S.H.Burnett,relative to said land and knows nothing about the charges of fraud made by the complainant against the defendant S.H.Burnett,but this defendant does know and so state that each and every charge contained in the bill to the effect that this defendant was a party to any fraudulent transaction in connection with this or any other transaction between the complainant and defendant S.H. Burnett is absolutely false.

In acting as trustee this defendant did no more than he would ask any friend or neighbor to do for him. In the sale of the lands defendant acted simply as trustee of course,without in any manner whatever trying to show any favor to anyone.

Said sale was made in compliance with the term, condition and authorities contained in the trust deed under which he acted. The said S.H. Burnett was the highest bidder at said sale and for that reason only the land was knocked off to him. Knowing the land defendants states that the price paid by the purchaser was all that it was worth and probable more than it would sell for for cash; but the land being the only security for the debt S.H. Burnett had to buy it in order to protect himself against loss. And now having answered fully this defendant prays to be dismissed.

S.A. Booth

By Jerman & Jerman.
Sols.

2581, At. 1st. Col. F.
Booth & Jerman

Filed Feb. 7th, 1925,

Boyle, Henderson
& Co.

2018.
BY JAMES H. JAMES.

S. A. Booth

and now having answered fully the defendant's plea to be dismissed.
Booth now to only it in order to protect himself against loss.
whereas the land being the only security for the debt S. H.
all that it was worth and property more than it would sell for for
land defendant states that the price paid by the defendant was
that reason only the land was knocked off to him. Knowing the
the debt S. H. Booth was the highest bidder of said land and for
reason of being taken back and it being sold to him.
said sale was made in compliance with the terms, conditions and

SOLOMON KOONCE

VS

WHIT KOONCE ET?ALS.

AND

S.H.BURNETT CROSS COMPLAINANT

VS

SOLOMON KOONCE AND WHIT KOONCE

IN CHANCERY COURT AT
ALAMO TENN.

35

ANSWER OF SOLOMON KOONCE TO THE CROSS BILL OF S. H. BURNETT.

CROSS DEFENDANT SOLOMON KOONCE, reserving unto himself the benefit of all exceptions for imperfection and irregularities in said bill, for answer of so much and such parts as he is advised is material says;

1.

That he never did tell cross complainant that his co defendant Whit Koonce never paid any rent for the land cultivated but on the contrary states that he always paid his rent promptly, and any statement of the contrary is untrue; both before and since the pretended deeds of April 1920 was pretended to be executed as set out in said cross bill.

II.

This cross defendant says it is not true as stated in said cross bill that prior to the year 1919 he had been getting deeper in debt each year but on the contrary he was out of debt and had two hundred dollars on deposit in the bank, and the said Burnett found it out and come to the cross defendant and said he was in a tight for a little money and you have two hundred dollars in the bank drawing no interest and let me have it for a short time and I will pay you interest for the time that I have it and this cross defendant refused to let him have it at first but on the

second application he promised to pay him back whenever this cross defendant called for it, he let said Burnett have it, and he said he had no note with him but would fix it up and give it to this defendant some time, when he met him, but said Burnett when he would ask him for the note always had some excuse but would promise to do so soon but never did.

This defendant states unto your Honor that he has never paid one cent of it back and is just due this old man two hundred dollars and interest of borrowed money for which he sues and prays for a judgment against said Burnett for said amount.

In addition of all this, said Burnett comes to this cross defendant and wanted him to go his security to a Jackson Bank for two hundred dollars borrowed money and this defendant said to him I am a negro and they wont take me and Burnett replied that they wont know that you are a negro thereupon, he told cross complainant to put his name down and he did so.

III

The statement in said Burnetts cross bill that this cross defendant owed him \$1500.00 by note with six years interest at the time the said pretended deeds were supposed to be executed on 28th day of April 1920 and referred to a mortgage ~~and~~ dated in 1907 was astounding revelation to this cross defendant and cause for an investigation, when the following facts were developed.

At that time said Burnett was largely indebted with the Citizens Bank of Murry City and continued so until said bank went into the hands of the State Banking Department in the year 1915 and that he used a note as collateral security perported to have been executed by this cross defendant for a considerable sum claiming that he was well secured by a mortgage on real estate, and that the said Citizen Bank also used said note as collateral security to get money, none of which was known to this cross defendant until since the filing of said cross bill all of which will be shown in the proof at the hearing.

He states he had no knowledge of said note at the time that he never knowingly made the said Burnett any such note or mortgage and charges that it was another said Burnett scheme to get by on and evidently to cheat and defraud this cross defendant out of his land. He further stated that the \$1500. was about the market value of the land from above 1907 to 1913 but strange to say as the land advanced the alledged indebtedness increased accordingly. The defendant states in positive terms that he never in no way consulted with Jim Walker or Whit Koonce as to making said pretended sales of his land to them, that he never asked either of them to assume any indebtedness for him to said Burnett for he did not own him a cent but on the contrary said Burnett was indebted to him as herein stated before.

37

This defendant states as a fact that the said Burnett did all the planing, wrote for Jim Walker to come and sent for the surveyor, did all the planing, telling the defendant all the time ~~and~~ he was his friend and doing for this defendant interest and this defendant beleived in and confided in and relied on what he said, as he was his confidential advisor. But he states that he told Burnett all the time and told all parties in Neal's office that he was not going to deed away his land as long as him and his wife lived and they all understood that much.

That he was not going to give it up or give possession but Burnett said to him there in the office in substence you sign this deed and you and Cherry will get your board free and your clothing free and all your expenses be paid, including doctor bills and collect your rents just as you did before and if Jim or Whit fail to do as they have agreed to in this writing, he had in his hand any one year it will amount to nothing and the land will be yours just the same as if you had not signed the deeds and was on the face of this statement by said Burnett that he signed said deeds. This defendants states and charges that the foregoing statement made to him by said Burnett was done intentionally to mislead and to obtain an undue advantage of this cross defendant, that he

had never in no way shape or form ratified the same.

This defendant with emphasis reiterates, the statement that the said S.H. Burnett did beg, persuade and influence the cross defendant to make the pretended deed on the 28th of April 1920 and any statement to the contrary is absolutely untrue.

That said Burnett deceived him that he did not know the purpose of said paper and that said Burnett concealed the real and true facts from him, thereby practiced a great fraud on him.

As to the statement in said cross bill that the defendant Whit Koonce and not his father instigated this suit is positively untrue and the cross complainant knew better when he made the charge because he well knew that this cross defendant had been to see and consult with two different law firms even before he bought the land at the trustees sale that on one occasion over a year ago, when he had been to consult a lawyer the defendant found it out and stopped this old man on the road on his way home and tried to find out who he saw and what he was going to do, and that in that conversation he asked said Burnett in the presence of a witness how come him Burnett to get the thing so tangled up and Burnett said with a smile, said Uncle Sol get that out of your head and go home and rest easy and it will come around right and you will not lose your land. Just a few days before sale of the Whit Koonce tract by Booth, trustee, he went to see another lawyer to try to get some information, he too represented some adverse interest and could not get any satisfaction; the time and name of the lawyers can be given if called for by Mr. Burnett.

As to the charge in said cross bill that if Whit Koonce had discharged his obligation to this cross defendant as well as Jim Walker there would be no cause for complaint; the cross defendant says that said Whit Koonce has at all times and his family has been kind and good to him and was all that he could ask and that Annie Walker would have been good to him but for her husband Jim Walker, that Walker was disagreeable, high tempered seemed to be mad all

the time, demanding of this cross defendant to pay board and finally made the defendant leave his home and he had to go back to Whit's. He further states that it is a part of said Walkers reputation in the community as being rough, high tempered, disagreeable, hard to get along with to show that this defendant is not extravagant in his statement about Walkers conduct, he was indicted, tried and convicted and fined \$100.00 at the last term of the Circuit Court for his cruelty to a boy he was raising and as usual the defendant S.H. Burnett secured the payment of the same. This cross defendant charges that the pretended deeds of trust from Whit Koonce and wife the 28th of April 1920 to S.A. Booth, is null and void on its face and in law for the reason no land is described, fails to show in what state, territory or what county it is situated, that it cannot be located by said deed, that they had no vested interest in said land, that they could convey, therefore the alledged deed from said S.A. Booth to said S.H. Burnett did not convey any interest in the cross defendants land to the said Burnett which he is trying to get possession of. That said Burnett has full notice of the same when he took the deed from said Booth. This cross defendant denies that he said to Jim Walker that cross complainant had a mortgage for \$1100.00 or any other amount on his land.

He denies that he discussed the sale and plans with Jim Walker.

He denies that Jim Walker paid any bills or expenses as alledged in said cross bill.

- He denies that ^{he} owed said Burnett \$1500.00 or any amount as claimed in his cross bill at the time said pretended deeds were made. He denies that he talked to said Burnett about what he owed him for he did not owe him anything.

- He denies that ever asked said Burnett for \$5.00 or any other amount as set out in cross bill.

As to the charge in said cross bill that it was liberality of the cross defendant toward certain ones of his children that caused him to be so indebted to cross complainant, has a little coloring in this way, to wit: Several years ago one of his sons was in need of

a horse and this cross defendant bought a horse known as the Childress horse for which he paid two hundred dollars and the said Burnett entered into a collusion with this son and beat the cross defendant out of the horse.

This cross defendant states and charges that said Burnett made all arrangements to put the land deal through, that he paid all fees, State tax, and expenses and never asked for reimbursement, which of itself with those who are acquainted with his stinginess is sufficient to create a grave suspicion on the whole transaction. Each and every charge in said cross bill now specifically denied is hereby generally denied and legal proof is demanded on each charge.

40.

Now having fully answered he prays he prays to be hence dismissed with reasonable cost.

W.F. Poston.

Solicitor.

*2551, App 2 vol 40, P
made out of
over*

Filed Jan 29th, 1925,
Deyle Henderson
et al.

Solicitor.

M. E. Boston.

with reasonable cost.

Now having fully answered the bills as bills to be rendered against
charges.

It is hereby requested that the bill be paid on each
such and every charge in said cross bill now specifically stated
is sufficient to create a valid obligation the whole transaction
which of itself with those who are acquainted with the circumstances
tax, state tax, and expenses and never asked for reimbursement
all arrangements to pay the bill last mentioned that he paid all
this cross defendant states and charges that said bill was
the cross defendant out of the horse.

Said bill was entered into a collation with this bill and was
undisputed for which he paid two hundred dollars and the
a horse and this cross defendant bought a horse known as the

No.1624.

Solomon Koonce

vs

Whit Koonce,et als.

And

S.H.Burnett,cross bill,

Vs.

Whit Koonce,et als.

In Chancery Court at Alamo,
Tenn.

ANSWER OF WHIT KOONCE TO THE CROSS BILL OF S.H.BURNETT.

41

The seperate answer of Whit Koonce to the cross bill that S.H. Burnett filed against him and others in the above styled cause about the 31st day of December 1924,reserving to himself the benefit of all exceptions,for the imperfection and irregualarities therein contained for answer to so much and such part as he is advised material;says;

I

He denies that he is now or ever was in possession of said land in controversy; on the contrary he states that his father never give him possession or control of said land but he Solomon Koonce retained absolute control and possessiln of the same after the 28th of April 1920 as he had always done,and this defendant continued to pay rent as he always had done for the use of the place.

II

He further states that he never contracted with his father or any one else to buy this land,that there never was a word passed between him and his father about buying the land,that he had no money and could not have bought it if he had wanted to,and complainant Burnett knew the fact as well as this defendant.

42 He further states that there was no consideration from him to his father for said land nor even the one dollar as alledged in said deed and that no one considertion was expressed or implied in said deed, that it not pretend to say whether said land was in Tennessee or some State or Territory, neither did it describet any tract or lot of land whatever and he avers it is therefore void, that he was never vested with the title to the land in dispute and therefore could not convey any title or interest to the said S.A. Booth or anyone else, as said deed shown on its face that Solomon Koonce was not to part with any title or interest in said land as long as he lived and then it would not be this defendants property unless he had complied with the terms of the alledged contract which he had failed to do.

This defendant denies stoutly that he was consulted or agreed to accept the transfer of the said land from his father and assume the payment of \$2504.00 to said Burnett or any other amount, that nothing was said to him about it until after they got to Maury City and cross complainant told this defendant in substance to sign the trust deed and note as a matter of form and when the old man died he would get the place and this defendant avers on this statement of said Burnett he signed the papers because he thought said cross complainant was dealing fair and honest with him and relying on his statement he signed the papers that said Burnett had fixed. for him to sign.

III.

As to the charge in said cross bill that this defendant had never been an expert or successful farmer ~~for~~ answer says that he and cross complainant lived in sight of each other cultivate the quality of land and he is willing for the community to say under all the sourrounding and circumstances who has been the most successful in farming operations, he or the cross complainant. Then the conduct of cross complainant contradict his statement in \$ this that the prefered have a large debt on this defendant than his father.

This defendant denies that he agreed to accept the transfer of the land to him on the terms and conditions set out in said cross bill, this defendant avers that the said S.H. Burnett did persuade and influence his father to make the deeds referred to on the 28th of April 1920 and this defendant had nothing to do with it and all he knew.

43 This defendant states that he is advised and so charges that the pretended deed of trust purposed to have been executed by him and wife on the 28th of April 1920 is null and void in law for the reason no land is described, the papers fail to show where said land is located, referred to in said deed of trust, all of which was well known to said Burnett when he ~~it~~ accepted the same, that this defendant never had any title to said land, nor even possession of land and said Burnett well knew all these facts, when he had the pretended deed of trust made to Booth for his benefit he also was well acquainted with the fact that he never had any title when he bought it at the trustees sale.

Each and every charge, allegations in said cross bill not specifically denied is hereby generally denied and strict legal proof is demanded.

Now having fully answered he prays to be dismissed with his reasonable cost.

W.F. Poston.

MODIFICATION OF INJUNCTION.

Solomon Koonce,

Vs.

No.1624.

S.H.Burnett, et als.

The above cause came on to be heard before the Chancellor at his Chambers in the City of Paris, Tenn. Jan.2nd.1925, on motion of defendants to modify the injunction heretofore granted so as to remove all restrictions as to the defendant Jim Walker and his tenants from entering upon, cultivating and controlling the tract of land claimed by said defendant Jim Walker, under a deed from complainant Solomon Koonce, the same being the west part of the Solomon Koonce 25 acres; said land being described in the bill and cross bill herein.

44

Said motion being heard and understood by the Court the same is allowed, and upon defendant Walker executing bond in the sum of five hundred dollars, conditioned to pay the complainant Solomon Koonce such damages as he may sustain by reason of the modification of said injunction, the C. & M. will enter on his Chambers docket an order modifying said injunction in accordance with the above motion.

Tom C.Rye, Chancellor.

MODIFICATION OF INJUNCTION BOND.

Solomon Koonce,

Vs.

No.1624.

S.H.Burnett,et als.

We, Jim Walker principal, and W.C.Hays, surety acknowledge ourselves indebted to Solomon Koonce in the sum of Five Hundred Dollars; said obligation being conditioned as follows:

45 The injunction heretofore issued in the above styled cause, was on the 2nd day of Jan.1925, on motion of defendants, so modified by the Chancellor, as to remove all restrictions as to the defendant Jim Walker and his tenants from entering upon, cultivating and controlling the tract of land claimed by the defendant Jim Walker under deed from Solomon Koonce 95 acres, said land being described in the bill and cross bill herein, and acting under said modification the said Jim Walker expects to remain in possession of and cultivate said land by himself and tenants; now, if the said Solomon Koonce shall in any way be damaged by the modification of said injunction and the above named obligors shall pay to the said Solomon Koonce all such damages and otherwise abide by and perform the judgment of the Court in the premises then ~~the obligor~~ this obligation shall become null and void; otherwise to remain in full force and effect.

Approved and filed Jan.
3rd, 1925.

Doyle Henderson,
Clerk and Master

Jim Walker,
S.H.Burnett
W.C.Hays.

TO THE HONORABLE TOM C. RYE, CHANCELLOR, PRESIDING AND HOLDING
THE CHANCERY COURT AT ALAMO, TENNESSEE.

Solomon Koonce, aresident and citizen of Crockett County, Tenn.,
Complainant.

VS

Sam H. Burnett, S.A. Booth, Jim Walker, Whit Koonce, all citizens
of Crockett County, Tenn., and

The Bank of Alamo, a banking corporation with its principal place
of business at Alamo, Crockett County, Tennessee
Defendants.

46 Complainant would respectfully show to the court, that he is a
colored man about ninety-seven years old and was a slave of Isaac
Koonce before his freedom. A few years after the Emancipation Pro-
clamation of Abraham Lincoln, his old master gave him two hundred
and fifty acres of very fine timbered and farming lands, being a
part of his old master's home place, which was then in Haywood county,
but now in the 8th. Civil Distridt of Crockett County, Tenn.

Complainant took possession, commenced clearing and improving the
same, raised a large family of children and gave them some education,
and as they married off, he would settle them about on the farm and
set them up to housekeeping, and continued until he reduced his acreage
to about ninety-five acres.

That when his son, the defendant, Whit Koonce and Complainant's
daughter, annie, who married Jim Walker married he settled them on a
part of the land, but made them no deeds and charged them rent, which
with his other income was ample to support and keep him and his wife,
Cherry Koonce, in comfortable circumstances without work; in fact they
were not able to do much work by this time, because of their age. That
neither he nor his wife had any education whatever.

Complainant would further show to the court that his old master
owned several hundred acres of land, had no children, that he took his
niece, when about ten years old to raise and educate, who later married
Thomas Burnett, a neighbor boy known to complainant since his birth,

who lived in a half mile of said Isaac Koonce, and after their marriage they lived with said Koonce until his death, and in the meantime the defendant, Sam H. Burnett was born. The old man gave said Burnett and wife about four hundred acres of land adjoining the land given to the complainant, which they built on and moved to and the complainants and said Burnett family was as friendly and neighborly as it was usual and customary for colored and white families to be under like circumstances.

Complainant would further show that he counseled with and relied on said Thomas Burnett as long as he lived in all business matters, and after his death, which occurred about sixteen years ago, the the complainant went to his son, and relied on him, the defendant, Sam H. Burnett as legal advisor and confidential friend in all matters, as he was an educated man; thinking he would not take any advantage of the complainant's ignorance and illiteracy.

3rd.

47
Complainant would further show unto your honor, that about the year 1919 the defendant Sam H. Burnett began to talk with and advise the complainant to give up his farming business and dispose of his land: that he was getting too old, and that he could arrange to get all the money he and his wife needed to live on, and they had done enough hard work, and it was now time for them to live on easy street, that he would have enough income to live on as long as "you and aunt Cherry lives"; so he says, these are his words; and when complainant ask him how it could be done, he said Burnett Replied. "You let me have it fixed like I tell you and it will be all O.K." thereupon the complainant told him to go ahead and fix it right, he said "Uncle Sol, you know I will do right. He said, deed your land to Whit and Jim Walker, but make them support you and aunt Cherry as long as you live, and that will keep people from trying to take it away from you like Ike Revelle did from old uncle Isaac (meaning Isaac Koonce). Complainant, believing said Burnett was his friend, and relying on him for counsel, and advice as to the best thing to do, told him to go ahead and have it fixed up. So said Burnett had the said Jim Walker who had moved to Carroll County, Tenn. to come down and made arrangements for complainant and his wife,

Cherry ; and his son, Whit Koonce and said Jim Walker all to go to Maury City and get Squire J. M. Neal to write the deeds and note for the amount the said Whit and Jim Walker were to pay each year as long as complainant and wife lived. When they got to Maury City, the defendant Burnett told Squire Neal what they wanted and while said Neal was writing the pretended deeds for the ~~defendants~~ complainant and his wife Cherry to sign, the defendant Sam Burnett, wrote a note or an agreement for the said Whit Koonce and said Jim Walker to sign, promising to pay the complainant \$400.00 each year as long as complainant and wife lived, to be equally divided between the said walker and Koonce, that is, \$200.00 apiece, each year. The complainant insisting all the time that he would not sign ~~any~~ deed or other paper that would take away his right to the land before his death, and they all assured him that the deed as written and especially, the defendant Sam Burnett, said to him to sign the deed, and if they failed to pay him his four hundred dollars any year then the land would be his, and having confidence in and relying on what said Burnett said to be true, he signed the deed or paper that Squire Neal wrote. Said deed, as they call it, shows on its face that it was a gift to Jim Walker for the consideration of one dollar, and the further consideration mentioned in said deed, that complainant and his wife Cherry Koonce retained the right and title to said land for their support as long as they lived, and burial expenses, a certificate of said deed is hereunto attached and marked exhibit "A" prayed to be made a part of this bill but not to be copied unless called for.

Complainant would further show to the court that the pretended deeds of gift, on the 28th. day of April 1924 to his son, Whit Koonce and his son-in-law, Jim Walker does not divest any interest of title to said lands out of complainants . and vest no interest whatever in either of the defendants, Koonce nor Jim Walker, as will be seen from inspection of said pretended deeds, or copies hereto attached and made a part of this bill. For the reason they do not show in what state or county said land is located, therefore he charges it is void in law and in fact. Further, they show upon their face , that the Complainant retained the right and title to all of said lands as long as he and his wife lived, for their support and burial expenses, and as to the Whit Koonce tract, there is

no land embraced in said call set out in said deed, to said Whit Koonce as will be seen from a plat of the two tracts attached to this bill and marked exhibit "Solomon" and made a part of this bill, but not to be copied unless called for.

Complainant would further show to the court, that neither said Whit Koonce nor Jim Walker, ever had any right, title or interest in his two tracts of land herein referred to; that they could not convey to the defendant, S. A. Booth for the use and benefit of the defendant, S.H.Burnett; and that all of his pretended deeds and transfers of either of said tracts ~~as~~ his co-defendants Booth or Burnett is null and void in law and in fact, and carried with said conveyance no title whatever, and further said defendant Burnett had full notice of all of said transactions and was a party to them, and the originator of the whole scheme.

Complainant would further show to the court, while the said Neal was writing said deeds for him and his wife Cherry to sign, the defendant, Burnett wrote the following note or agreement for the defendants, Whit Koonce and Jim Walker to sign and give to the Complainant:

"This article of agreement between Whit Koonce and Jim Walker is to pay ~~40~~ to Solamon Koonce and his wife Cherry the sum Four Hundred Dollars, equally divided between us as ~~1000\$~~ their support from year to year as long as they shall live, and after meeting Dr. bills and all expenses, if any personal property is left, it is to be equally divided between us.

(Signed) Whit Koonce

Jim Walker

The Original paper will be offered as evidence on the trial.

After said ~~Whit~~ Koonce and Jim Walker had signed said note or agreement defendant Burnett handed it to complainant with instruction to let nobody have it.

Complainant would further show to the court, that no part of said agreement has been complied with by said whit koonce and Jim Walker, and they flatly refuse to do so, ~~\$80~~ in fact the defendant Walker will not let him stay at his house and won't have anything to do with complainant. The

defendant, Burnett, told complainant that him and his wife were to stay with Whit half of the time and with Walker the other half and would have no board to pay.

That before they got him to sign said deeds he collected from said Whit and Jim Walker about \$175.00 per year as rent on ~~\$\$\$~~ each tract of said land, but that they had not paid him a cent of rent since, although he continued to collect of of the tenants on the Walker place until he, Walker, moved back on it from Carroll county. That he has left said place now and moved in a house in the defendant Burnett's yard, but still cultivates the place and pays rent to said Burnett, or did do so this year.

Complainant would further show to the court that he never owed, or was in any way liable to said Burnett for any amount, when he signed the pretended deed to Whit and Jim Walker, and he states on reliable information and belief that neither of them was in any way liable to said Burnett for any amount whatever. That said alleged indebtedness due said Burnett is fictitious and claimed for a fraudulent purpose in order to cheat the complainant out of his land.

4 50 On the contrary the complainant states, and will show to the court on the hearing that at that time and for years before, and now, the defendant Burnett was heavily indebt, had mortgaged his land for Forty-three Hundred Dollars borrowed money, and at that time had no surplus money on hand, as he will be able to show on the trial of this cause.

He further states that the defendant Booth is close neighbor and a confidential friend of said Burnett and is ever ready to aid said Burnett to carry out all such schemes as this, as he will be able to show on the trial.

Complainant would further show to the court that the tract alleged to be conveyed to defendant Walker is reasonably worth Four Thousand Dollars, that he is not able to work, nothing to live on, come to the office ~~\$\$\$\$\$~~ of his lawyer to-day almost barefooted, it cold, raining, and no money to buy necessary clothing and provisions.

Complainant would further show to the court that the defendant Burnett, who had planned and worked up the scheme to have the complainant and wife Cherry; to divest themselves of all interest in said land, at

once claimed to the defendants Whit Koonce and Jim Walker that the complainant was largely in debt to him and that they must secure the same by deed of trust to his friend S.A. Booth as trustee to make his debt safe and then and there by false and fraudulent representation was successful in carrying out said fraudulent plans. He further represented that it would be about \$2500.00 on each tract of land, and before leaving the said Neal's office, he had induced the defendant Whit Koonce and wife to sign and acknowledge a trust-deed to the defendant, S.A. Booth for Twenty-five Hundred and four dollars and ninety cents on their tract, ~~\$2500.00~~ and the defendant Jim Walker to sign a trust-deed to his co-defendant, S.A. Booth on his tract for \$1904.35, and sent the trust-deed to Carroll County for said Walker's wife to sign and had it registered on the 7th. day of May 1920, a copy will be filed on or before the hearing. Said Burnett transferred said note to the defendant, Bank of Alamo, and on May 16th. 1922 H.B. Nance, Cashier of said Bank acknowledged payment of said note and discharged the loan.

51 On the first of January 1922 at said Burnett's request, said Jim Walker and wife reconveyed the said tract to the said S.A. Booth to secure said Burnett in another debt of \$2077.80, due Dec. 1922., which was a fictitious debt and made for the purpose of furthering, if possible, of defrauding the complainant, and that he transferred said note to the defendant bank to secure a pre-existing debt due from said Burnett. He would further show to the court that the said Burnett had said Walker to withhold said pretended deed from complainant to him, Walker, from the Register's office until May, 1924.

Complainant states the records and papers show and the facts are taht before the complainant and other parties to the transaction left Squire Neal's office on the 28th. of April 1920, the defendant S.H. Burnett had all of said land covered with mortgages to his friend, S.A. Booth as trustee, for his benefit, to secure an alleged indebtedness by notes made to S.H. Burnett amounting to \$4478.25, which complainant said was fictitious and fraudulent and now boastingly asserts that all of said

land that complainant owned before the 28th. day of April 1920 belongs to him as he is fraudulently schemeing to wrongfully get possession of the same, which if permitted to be done would work irreparable injury to the complainant.

On the 5th. day of May 1924 the defendant S.A.Booth as trustee pretended to sell the Whit Koonce tract to the defendant S.H.Burnett for \$2470.00 cash and as trustee made the defendant Burnett a deed to same. On the 16th. af May 1922 H.B. Nance as cashier of the defendant Bank of Alamo acknowledged to the payment of the \$1973.35, and discharged the lein on the records against the Walker tract.

On Jan. 1 1922 the said Jim Walker and wife reconveyed to said S.A.Booth as trustee the said Walker tract to secure a debt to said S. H. Burnett for \$2077.80, due the 25th. of Dec. 1922, but not acknowledged until the 9th. of May 1922, and recorded 16th. of May 1922.

52 In short the complainant states and charges that the defendant, S.H. Burnett has by false statements and fraudulent transactions, assisted by the defendant S.A.Booth acting as trustee for him succeeded in getting the alleged legal title in himself of all the land the Complainant had on the 28th. day of April 1920, reasonably worth Eight Thousand Dollars, by fraudulent transactions, and is threatening complainant and his tenants on the sai lands to take possession for himself in violation of every principle of common honesty and fair dealing, therefore he prays to your honor for protection and prays for all proper orders to that end. When he made his mark to said deed he was sick, weak in body and mind and incapacitated to contract, and was overreached by said Burnett to sign said deed mentioned in said bill.

Complainant would further show unto your honor that he requested that the deed be made to his daughter, Annie Walker, the wife of defendant Jim Walker and said S.H.Burnett assured him it would be done that way, and never knew any better until last week. That he never would have consented to make it to Jim Walker.

Complainant states and charges that he is entitled to have said said pretended deed, mortgage or paper, whatever it may be called, that J.M.Neal wrote on the 28th. day of April 1920, pretending to convey some interest in the 46 7/8 acres of land described in said paper, exhibit "A"

declared null and void, and same delivered up and set aside, and that all the right and title and interest in said S.H.Burnett and defendant, S.A.Booth and Jim Walker be divested out of them and the same vested in the complainant, and that he be restored to peaceful possession of same, that the cloud on his title to said 46 7/8 acres be removed; or if he is not entitled to this specific relief, then, he charges that he is justly entitled to a decree against the defendants for four hundred dollars for each year with interest on the note of agreement signed by said Whit Koonce and Jim Walker, herein set out and described, making a total of \$1600.00 and interest, and a lien on said land to satisfy the said decree.

Complainant charges that the defendant, S.H.Burnett, planned, ~~\$668-~~ concocted, schemed, worked up the plan herein set out to cheat, defraud and swindle the complainant out of his land, both tracts being reasonably worth eight thousand dollars. That the defendant had no just claim of any kind against complainant for which he or his land was liable for.

53 That neither Whit Koonce nor Jim Walker was in any way justly indebted to said Burnett or liable to him in any manner at the time he procured the said deed of trust to be made to the defendant, S.A. Booth for his use and benefit on said 46 7/8 acres of land to secure the said \$1904.35. That the defendant is now planning and fraudulently scheming to get possession of the said 46 7/8 acres mentioned in said deed and to get the complainant and the defendant Jim Walker off said farm, in order that he may get possession, and will do so unless restrained by proper orders from your honor.

He further states and charges on information and belief, that the defendant S.H.Burnett will sell and convey or dispose of said land in not enjoined from doing so by your honor; that he is about to fraudulently dispose of said land for the purpose of further cheating and defrauding complainant.

Complainant would further show unto your Honor, that as soon as he learned the facts as stated in this bill, he immediately took steps to

employ counsel and institute suit for the recovery of his property and have his rights restored to him and the cloud removed from the title of his land.

He further states and charges that consideration promised was grossly inadequate for the property

Complainant would further state and charge that the co-defendants S.A. Burnett has caused an estrangement between the complainant and his daughter Andie and that she nor her husband will have anything to do with complainant since he moved them into his yard, and he charges he designingly brought it about in order, if any trouble or litigation ever came about in reference to this property, and the various transactions, he could use them to further his fraudulent schemes.

PROMISES CONSIDERED COMPLAINANT PRAYS:

1st.

54 That all the parties named in the caption as defendants be made ~~\$\$\$\$\$~~ such; that a copy of bill and subpoena issue requiring each of them to ~~appear~~ answer at first rule day and answer each and every allegation in said bill, giving dates, amounts, times and places, but oath to their answer is waived.

2

That the State's writ of attachment issue and be levied on the 46 7/8 acres of land set out and described in exhibit "A" to the bill, called the Jim Walker tract.

3

That an injunction issue inhibiting the defendants Sam H. Burnett, ^{Jim Walker,} and S.A. Booth from going on said land described in exhibit "A" or in any way interfering with the peaceful possession of the complainant or the defendant Whit Koonce or any of the tenants on said farm, or from selling, transferring or in any manner disposing of said property, or interfering with the complainant in any manner, directly or indirectly, or the peaceful possession of the complainant of the said 46 7/8 acres, called the Jim Walker place.

That complainant have a decree setting aside said pretended deed from said complainant and wife, marked exhibited "A" to the bill to the defendant Jim Walker for the 46 7/8 acres, declaring the same to be a fraud on complainant, and be ordered to be delivered to complainant, and that all right, title and interest, if any, that is vested in the defendant, or any of them be divested out of them and re-invested in complainant, and the cloud upon his title be removed; that he be restored to peaceful possession of said land and have a decree for reasonable rents against the defendants from the 28th. of April 1920 with interest and damage to said place. If defendant is not entitled to said relief, then he prays for a decree on the note or agreement set out and described for the \$400.00 per year\$ with interest, doctor bills and clothing that was agreed to be furnished to complainant and a lein be declared on said land to secure the same and it sold to satisfy the same.

55 That the defendant, S.H. Burnett, set out in his answer the date of his alleged note of 1904.35, by whom was it executed, and for what purpose, the time and place and who was present, how long had he had it in his possession on the 28th. day of April 1920; when and for what did he indorse it to the Bank of Alamo. How much had been paid on it and by whom; when and where did he get the \$2470. cash that he claims he paid to S.A. Booth on the 5th. day of May 1924 for said land; ^{he claims he got Apr. 28 1920 from W.K.} that he file said old note with the Clerk and Master for inspection by the Court; that the Bank of Alamo explain when how and for what did defendant Burnett transfer to said Bank any and all of said notes herein mentioned.

I, Solomon Koonce, do solemnly swear that owing to my poverty, I am not able to give cost, attachment and injunction bond in this case, nor bear the expense of said suit, that I am justly entitled to the redress sought, to the best of my knowledge and belief.

That this is the first application for attachment and injunction in this case.

Complainant prays for such other further and general relief as he may be entitled to under the facts of this case.

SolomonXKoonce
By W.F. Poston, Atty.
W.F. Poston, Sol.

STATE OF TENNESSEE
CROCKETT COUNTY

*
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*
*

Personally appeared before the under-
signed, the complainant, Solomon
Koonce, and made oath in due form
of law, that the statements, allegations and charges made in
the foregoing bill are true.

His
Solomon Koonce
Mark

Sworn to and subscribed before me this the 4th. day of
December 1924.

I.N.Lemond, Clerk.

By E.L.Lemond, D.C.

TO THE CLERK AND MASTER AT ALAMO

56 You will file the foregoing bill and issue the writs of attachment
and injunction as prayed for in said bill, without bonds: as com-
plainant has taken the paupers oath as prescribed by poor persons.

This the 8 day of December 1924.

R.K.Taylor, County Judge.

KNOW ALL MEN BY THESE PRESENTS; that we, Solomon Koonce and Cheery Koonce, of Crockett County, Tenn., for and in consideration of one dollar, cash in hand paid to me, and the further consideration passed to JIM WALKER, but the said Solomon Koonce and wife Cheery Koonce retain the right and title to said land, for their support during their natural lives, for their burial expenses; we have this day bargained and sold, and ~~for by~~ these presents bargain, sell, alien and convey unto Jim Walker, of Crockett County, Tenn., his heirs and assigns forever; all our right, title, except as above mentioned, to a certain tract of land bounded as follows, to wit:

Beginning at southwest corner of 5 acres tract deeded to Charlie Koonce runs thence east 33 1/2 rods; south 216 rods to A.P. Moore's north boundary line; thence west 35 1/2 rods to Charlie Koonce's S.E. corner; thence north 216 rods to the beginning, containing 46 7/8 acres, more or less,
57 TO HAVE AND TO HOLD the said tract of land, with all improvements, tenements, hereditaments, rights, privileges and appurtenances thereto, belonging to said Jim Walker, his heirs and assigns forever, WE COVENANT with the said Jim Walker that we are lawfully seized of said land; have a good right to convey same and that it is unincumbered; WE FURTHER COVENANT with the said Jim Walker that we will warrant and defend the title to said tract of land to said Jim Walker, his heirs and assigns \$\$\$\$\$\$, against the lawful claims and demands of all persons whomsoever;

This being the same property purchased by me of---on ---day of ---
Deed found of record in Deed Book ----page ----.

IN WITNESS WHEREOF we hereunto subscribe our names, on this the 28th.
day of April 1920.

His
Solomon X Koonce
Mark

her
Cheery X Koonce
Mark

STATE OF TENNESSEE
CROCKETT COUNTY

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Personally appeared before me J. M. Neal,
Notary Public of said county, the within
named Solomon Koonce and Cheery Koonce, the
bargainers, with whom I am personally acquainted, and who acknowledged
that they executed the attached instrument for the purposes therein con-
tained, and Cherry Koonce, wife of the said Solomon Koonce, having
personally appeared before me privately and apart from her husband, the
said Cherry Koonce acknowledged the execution of said instrument to
have been done by her, freely, voluntarilly, and understandingly, with-
out compulsion or constraint from her husband, and for the purposes
therein expressed.

Witness my hand and Notarial Seal at office in Maury City,
Tenn., this 28th. day of April 1924

(Seal)

J.M.Neal, Notary Public.

58 Filed for record 16th. day of June 1924 at 6 o'clock P.M. so noted on
Minute Book 5, page 50.

F.J.Evans, Register.

I, F.J.Evans, Register, do certify this to be a correct copy of the
instrument recorded in deed book No. 5, page 100, records Register's
Office at Alamo, Tenn.

This 6th. day of Dec. 1924.

F. J. Evans, Register.

JIM WALKER AND WIFE

TO

S.A. BOOTH

APRIL 28. 1920

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KNOW ALL MEN BY THESE PRESENTS, that we, Jim Walker and Wife, of Crockett County, for and in consideration of one Dollar cash in hand to be paid, the receipt of which is hereby acknowledged and other consideration hereinafter mentioned, have this day bargained and sold, and

and do by these presents bargain, sell, and convey unto S.A. Booth, Trustee, of Crockett County, heirs and assigns forever all our right, title and interest in a certain tract of land bounded as follows:

Beginning at the South East Corner of 5 acre tract deeded to Charlie Koonce on the 28th. of April 1920, runs east 33 1/2 rods; south 216 rods to AP. Moore's north boundary line; thence west 35 1/2 rods to Charlie Koonce's S.E. corner; thence 216 rods to the beginning, containing 46 7/8 acres, more or less.

TO HAVE and to hold said tract of land with all improvements, tenements, hereditaments, right, privileges, appurtenances thereunto belonging to said Jim Walker, heirs and assigns forever

WE COVENANT with said S.A. Booth that we are lawfully seized of said land and have a good right to convey the same, and that it is unincumbered. WE FURTHER covenant with said S.A. Booth, trustee, that we will forever warrant and defend the title of said tract of land to said S.A. Booth, his heirs and assigns against the lawful claims and demands of all persons whomsoever.

THIS being the same property purchased by me of Solomon Koonce on the 28th. of April 1920, and found of record in Deed Book No---Page--- but this same conveyance is made unexecuted for the following purpose and use and trust and no other, to wit:

WE ARE\$ indebted to S.H. Burnett in the sum of 1973.95 and desire to make certain the payment by the execution of this mortgage the payment thereof, now therefore^{if} we shall pay or cause to be paid the said S.H. Burnett the aforesaid indebtedness and the cost of making and executing this trust, on or before the fifth of Nov. 1920, then this conveyance shall be void and of no further force, and effect, But if we shall fail to pay the cause to be paid the S. H. Burnett the aforesaid debt, and all accrued

interest and all cost of this trust as aforesaid, by the 15th. of NOV.
1920, then the said trustee and mortgagee, S.A. Booth without taking
or executing bond, may take immediate possession of the property, herein
conveyed and proceed to sell the same at public auction in front of the
east door of the courthouse at Alamo, Tenn., to the highest and best
bidder for cash, after first having advertised by printed or written hand
Bill the time, terms and place of said sale when so made to pay, first
the cost of making, executing this mortgage, and the payment also of the
aforesaid indebtedness and any accrued interest, and the remainder, if any,
to me or my order.

In case a sale is made under the terms and provisions of this mortgage
we hereby waive and relinquish all right of redemption and homestead
dowry, and the title of the purchaser to be absolute.

Witness whereof we hereunto subscribe our names on 28th. day of April
60 1920.

Jim Walker

Annie Walker

Filed for registration May 7th. 1920.

Trust Deed Book H. H. page 405.

On 16th. May 1922 H.B. Nance Cashier of Bank indorsed on the margin
that the bank was a holder of the note and acknowledged satisfaction
and discharged the loan in full.

Marked exhibit "Solomon" to the Complainant's Bill
but not to be copied

NORTH
To the beginning

216 rods

No land included in its
lines

35 1/2 Rods

No state nor county mentioned
in the deed.

West*

216 Rods

* East

33 1/2 Rods
Begin. Cor 33 1/2 Rods

====Whit Looonce line

216 R. East

216 R. West

35 1/2 Rods

South

*
SOUTH

SOLONON KOONCE

VS

S. H. BURNETT

ET ALs.

FILED DEC. 24th. 1924

at 8:17 o'clock A.M.

Doyle Henderson,

C. K. M.

W. F. Poston, Sol

State of Tennessee

CHANCERY COURT AT ALAMO

To the Sheriff of Crockett County—Greeting:

Summon S.H. Burnett, S.A. Booth and Jim Walker and The Bank of
Alamo and Whit Koonce

to appear before the Chancery Court at Alamo, on or before the third Monday of December
next, to answer the original attachment & injunction bill which
Solomon Koonce

has filed in said Court against S.H. Burnett, S.A. Booth, Jim Walker & Bank of Alamo
and have you then and there this writ.

Witness Doyle Henderson, Clerk and Master of our said Court, at office in
Alamo, this 9th day of December, 1924.

Doyle Henderson
Clerk and Master.

By _____
Deputy C. and M.

NOTICE

To the above Named Defendant _____

You are hereby notified that you are required to make defense in this case on or before the
_____ Monday of _____, or judgment pro confesso will be entered against
you on the _____ Monday of _____, 192_____

Clerk and Master.

By _____
Deputy C. and M.

Came to hand 10th day of December, 1924. Executed as

commanded, and left a copy of the bill with Jim Walker

and a copy of this Subpoena to answer with each adult Defendant.

This Dec. 10th, 1924.

J. C. McLean, Sheriff.

NOTICE

No. 1625

Crockett County Chancery Court

Subpoena to Answer at Rules

IN CHANCERY AT

Alamo, Tennessee.

Solomon Koonce

vs.

Sam Burnett, et als.

Issued this 9th day
of December, 1924.

Clerk and Master.

Doyle Henderson
Deputy C. and M.

CHANCERY COURT AT ALAMO

State of Tennessee

STATE OF TENNESSEE

To the Sheriff of Crockett County—Greeting:

To S.H.Burnett, S.A.Booth and Jim Walker

_____, and to your Counsellors, Attorneys,
Solicitors, and Agents, and each and every one of them, Greeting:

Whereas, It having been represented to us, in our Court of Chancery at Alamo in a certain suit between_____

Solomon Koonce

S.H.Burnett, S.A.Booth and Jim Walker Complainant, and

Defendant S, on the part of said Complainant_____, that:_____ he _____ has _____ obtained
from Honorable R.K.Taylor County Judge, Gibson County an order for this Writ of
Injunction to issue, enjoining S.H.Burnett, S.A.Booth and Jim Walker from going
on the land described Exhibit A in the bill and known as the Jim
Walker tract, that complainant deeded to Jim Walker 28th day of April
1920, or in any way interfering with the peaceful possession of
complainant, or disposing or conveying said property directly or
indirectly

all as more fully set out in Complainant's Bill, to which reference is here made:

We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said parties above named, and all and every person before mentioned, under the penalty prescribed by law, of your and each of your goods, lands, and tenements to be levied to our use, that you and each of you do absolutely desist from doing, or attempting to do, any of the acts hereinbefore specified as enjoined until hearing of this cause in our said Court of Chancery.

Witness, DOYLE HENDERSON, Clerk and Master of said Court, at office, Alamo, Tenn the

Fourth Monday in November, 1924.

Doyle Henderson

Clerk and Master.

By _____

D. C. and M.

STATE OF TENNESSEE

Came to hand same day issued and executed by reading the within
injunction to the defendant, S.H. Burnett, S.A. Booth and Jim Walker.
This 10th of December 1924.

J.C. McLean, Sheriff.

No. 1625.

IN CHANCERY

Solomon Koonce

vs.

S.H. Burnett, et als.

INJUNCTION

Issued 9th of December, 1925.

Doyle Henderson

Clerk and Master.

By

Deputy Clerk & Master.

CAME TO HAND

192

Solicitor for Complainant.

STATE OF TENNESSEE

To the Sheriff of Crockett County—Greeting:

Whereas, Solomon Koonce

Complainant, ha S lately filed a sworn Bill of Complaint in the Chancery Court at Alamo against S.H. Burnett, S.A. Booth and Jim Walker

Defendant S, and charging therein that Defendant S justly indebted to Solomon Koonce in the sum of \$1600.00 or more Dollars, due by account respectively, and alleging

(State here nature of debt.)

about to fraudulent dispose of property

(Here state the cause of attachment.)

in which Complainant ha S prayed and obtained from the Honorable R.K. Taylor County Judge, Gibson County a fiat ordering a Writ of Attachment to issue to attach the property specified in said Bill of Complaint, and said Complainant having given bond and security as required by said order granting said attachment:

These are, therefore, to command you to attach the estate of the said Jim Walker

and particularly One tract of land described as follows, Beginning at the S.E. corner of a five acre tract deeded to Charles Koonce, and runs east 33 1/2 rods, south 216 rods to A.P. Moores north boundary line, thence west 35 1/2 rods to Charlie Koonce South east corner; thence north 216 rods to the beginning, containing 47 7/8 acres more or less.

or so much thereof as shall be of value sufficient to satisfy the debt and claim of Complainant, being \$1600.00 or more

and the costs of this suit. And you will keep said property safely, so that you may have the same at the next term of said Court to be held for the County of Crockett at the Courthouse in the town of Alamo, on the fourth Monday ~~any~~ May next, to answer such orders and decrees as the Court may make in relation there-

to, unless the said Defendant S shall replevy the same out of your possession, by giving bond with good security in double the value of said property, conditioned to keep the same in the jurisdiction of the Court, and to have said property at all times forthcoming to answer such orders and decrees as the Court may make in the case. And you will make due and legal return of how you have executed this writ.

Witness, DOYLE HENDERSON, Clerk and Master of our said Court, at office in Alamo, the Fourth Monday in November, A. D., 192 4

Doyle Henderson, Clerk and Master
_____, Deputy C. and M.

No. 1625.

IN CHANCERY

Solomon Koonce

VERSUS

S. H. Burnett, et als.

ATTACHMENT

Issued 9th day of

December 1924.

Doyle Henderson
Clerk and Master.

Solicitor for Complainant.

Came to hand same day issued and levied this ~~and~~ attachment on the land described in the bill, filed in this case, to-wit: Beginning southeast corner of a five acre tract deed to Charles Koons and runs east 33 $\frac{1}{2}$ rods south 216 rods to A.P. Moore north boundary line; thence 35 $\frac{1}{2}$ rods to Charlie Koonce south east corner; thence north 216 rods to the beginning containing 47 $\frac{7}{8}$ acres more or less, and known as the Jim Walker place in the 8th Civil District of Crockett County, Tennessee. Tis the 10th of December 1924.

J. C. McLean, Sheriff.

STATE OF TENNESSEE

SOLOMON KOONCE

NO. 1625

In Chancery Court at Alamo.

VS

S.H. BURNETT ET ALS.

ANSWER OF THE DEFENDANT JIM WALKER

The defendant, Jim Walker, for answer to so much and such parts of the bill filed in this cause by Solomon Koonce, as he is advised it is material for him to answer, answering says:

1

Defendant admits he is the son-in-law of complainant, having married his daughter annie in 1905.

66 It is true as stated in the bill, that at one time the complainant owned something like 250 acres of land which is located in the 8th. Civil District of Crockett County, Tenn. This land was known as the Isaac Koonce lands, and was as defendant always understood, deeded to Complainant years ago as a gift. It is also true, ^{that} from time to time the complainant conveyed to certain of his children part of this 250 acres, so that in 1920, at the time the deeds involved in this cause were executed, complainant owned less than 100 acres of the original 250 acres and this 95 or 100 acres was and has been for several years under mortgage; first as defendant understood, to O.G. Birmingham and then to S.H. Burnett, one of the defendants herein.

At the time said deeds were executed to this defendant and to his co-defendant, Whit Koonce, this defendant understood both from complainant and the said Burnett that the latter held a mortgage on said land for about \$1500.00 and that this mortgage debt had been due several years; that in the meantime the complainant had become further indebted to said Burnett to the extent that at the time of said conveyances said indebtedness amounted to four thousand dollars. This indebtedness as the defendant understood the matter, was the reason the complainant had decided to deed this land to this defendant and the said Whit Koonce. Complainant was at that time and had been for quite a while unable to do any labor and the only income he had was what he got from this

land. It seemed that Mr. Burnett, from what he said, was willing to extend payment of the amount owed him by the complainant provided the debt were assumed by this defendant and said Whit Koonce, who were to secure the said debt by mortgages on the land when deeds had been executed to them by the complainant and his wife.

67 This defendant states emphatically that the conveyance to him by the complainant and his wife on April 28th. 1920, set out in the bill was not made at the solicitation or suggestion of this defendant. In fact he had no knowledge that it was to be made until after the matter, as he later understood, had been discussed by the complainant between himself and possible Mr. Burnett. Defendant at the time this matter originated was living in Carroll County, and received a letter purporting to come from the complainant, setting out briefly what complainant had in mind relative to the division of this land, and asked that this defendant come to Crockett County, which he did subsequently, and the matter of the division was discussed by and between the complainant, this defendant, Whit Koonce and Mr. Burnett; the latter, so far as ~~the~~ this defendant could see or understand, had nothing to do with the matter further than to advise complainant at the latter's request, as to how the transaction could be closed up so as to secure the indebtedness of the complainant to Mr. Burnett, and at the same time secure the complainant and his wife, both of whom were in a manner helpless, a support during their lives.

The co-defendant Burnett was seemingly as much interested in the latter provision as he was in having his debt secure.

This defendant does not know, of course, the legal effects of the language used in the deed from complainant and his wife conveying to this defendant 46 7/8 acres of the west side of the 95 acres he then owned, but defendant knows what the agreement was as understood by the complainant, the said Whit Koonce, and the said S.H. Burnett before and at the time these deeds were executed.

The agreement was thus:

Of the amount that the complainant owed S.H. Burnett, this defendant was to assume and pay the sum of \$1973.90, and the defendant Whit Koonce was to assume and pay the sum of \$2504.90.

The amount assumed by each of the parties was to be secured by mortgage on the respective parcels of land deeded to them by complainant and his wife. It was further agreed and understood by all the parties that the complainant and his wife were to be supported by this defendant and the said Whit Koonce so long as they might live, and it was further understood and agreed that the land conveyed to this defendant and the said Whit Koonce was to be bound for this support. In order that each of the obligers, defendant and said Whit Koonce might understand just what each was to be responsible for each year, a written agreement was signed by each of them showing that so long as the complainant and his wife lived, this defendant and said Whit Koonce were to pay the sum of two hundred dollars toward the support of the old couple; these obligers were in addition to supporting these old people, w
68 to pay the expenses of their burial.

This defendant understood fully what his part of the obligation was under said deed and under his written agreement, and he insists that he has more than fulfilled his part of the obligation; he further insists that if the complainant has not been properly provided for, it has been caused by the failure of the said Whit Koonce to perform his part of the conditions.

At the time these deeds were executed this defendant who was living in Carroll County, was not situated so that he could at once move on the land deeded to him by complainant and his wife, but in January, following, he did move on the land and at once took the complainant and his wife into his home, and the defendant and his wife not only fed and clothed them, but waited on them as if they were children, especially was this necessary as to complainant's wife, who was not only quite old and feeble, but was most of the time until her death, as helpless as a little child. She was never out of the house from the time she moved in the house with the defendant and his wife until her death which occurred Aug. 8 1922, but one time. A great deal of the time she was in the defendant's home she was so helpless she had to be attended to the same as an infant; she was not able to wait on herself in attending a call of nature. She lived after coming to

the home of the defendant as above stated 20 months and the complainant remained in defendant's home after his wife's death about seven months when he went back to the home place where Whit lived and has always lived.

69 Outside of what defendant paid out for clothing for these old people the time they were in defendant's home, four hundred dollars a year, ~~\$\$\$\$\$~~ would not have been reasonable compensation for the services rendered to them by this defendant and his wife, in providing food, lodging etc., and waiting on them as they had to be waited on. Defendant is not prepared ~~\$\$\$\$\$~~ at this time to furnish an itemized statement of the various sums paid out for the complainant and his wife while in his home and since, but he will be able to do so. The total sum so expended however will aggregate not less than \$200.00. Defendant also paid over one half of the burial expenses of the complainant's wife.

Further answering, this defendant states that on more than one occasion since the death of complainant's wife, defendant has assured the Complainant that if he would either come to his home or make his home with some of the other children, or with any one whom he desired, other than the defendant Whit Koonce, this defendant would pay his board, lodging and necessary support as long as might live. The reason the defendant could not pay for these things so long as the complainant lives in the house with Whit Koonce is that the latter has a very large and a very improvident family, and whatever might be paid as support for the complainant would simply be that much toward the support of the family of Whit Koonce.

Not one dollar did the said Whit Koonce contribute toward the support of maintenance of the complainant while they made their home with this defendant, and according to the statements of the complainant he has contributed very little at any time. Nor did the said Whit Koonce or his family at any time offer to assist this defendant and his wife in waiting on their mother all the time the latter was in the home of defendant. This defendant as he will be able to prove, has at all times been industrious, made good crops and lived as well as the ordinary colored family, and while the complainant and his wife were in defendant's home they were not simply supported by having the neces-

saries of life, but they were made comfortable and fared as well as the ordinary famil in the family, white or colored. If at any time either the complainant or his wife ever complained that they were not properly cared for by this defendant or his wife defendant never knew or heard of it. On the contrary, they frequently said they were well treated, by defendant and his wife.

70 The allegation that defendant refuses to have anything to do with the complainant and will not allow him to come to defendant's home is not true, and in justice to the complainants honesty, defendant insists that this and similar allegations did not originate in the mind of the complainant, but are the words of another.

Further answering, defendant shows that because of ill feeling existing between the said Whit Koonce and his family, toward this defendant and his wife, the complainant has, as defendant has reason to believe, and does believe, prejudiced against this defendant and his wife; the complainant on account of his age and feeble condition of mind and body is easily influenced and the said Whit Koonce and family have taken advantage of this condition to array their father against this defendant.

C

DEFENDANT'S TITLE

Complainant in his bill, insists that under the deed executed by complainant and his wife on Apr. 28 1920, to this defendant the latter took no title to said land, because, first, he does not state where the land is located, and second, because the grantor's clause retained title during their lives. Defendant is advised and therefore insists that these grounds are not well taken. It is true the deed does not show in what civil district or county the land lies, but it can easily be identified by reference in the deed to adjoining land, and moreover the bill states that the land is situated in the eighth civil district of Crockett County, Tenn., so that defendant insists that the defect referred to is not ~~fatal~~ fatal to the deed, but is merely an error, that may be corrected. As to the second reason offered as to

why title did not vest in this defendant, defendant insists that it is also faulty. It is apparant from the face of the deed, to say nothing about the written agreement, signed by the grantee's at the time that the intention of the grantor's and the grantee's was that the title to said lands should vest in the grantees\$ subject to a lein in\$ favor of the grantors to secure them in a support so long as they should live.

71 Defendant knows this was the understanding and agreement on the part of all of the parties, and the matter was so stated to the draftsman, J.M.Neal, and the defendant insists that the language of the deed and the circumstance attending its execution, even as atated in the bill bear out this contention. Therefore defendant insists that the second reason offered by complainant as to why title did not rest in defendant is not sound.

Further answering, defendant shows that very soon after execution of said deed he took possession of said land thereunder inclosed, cultivated it, imprevd it greatly, paid the taxes thereon each and every year, assumed the payment of over \$1900.00 at the request of the complainant, which he said he owed S.H. Burnett, paid the interest each year on the said debt, and has already paid a sufficient sum on the principle to reduce it to about \$1200.00, and when the proceeds of the present crop are realized, he will be able to further reduce this debt to about \$1000.00. He has paid these taxes, interests, and debts on the strength of the validity of said deed from complainant and his wife to this defendant.

Defendant is advised and states that the complainant is entitled to support according to the terms of the said deed, and that these lands are bound for the fullfillment of that agreement on the part of the grantees, and this defendant does not seek to evade or shirk the results of such a lein, but he says that it will be unjust and inequitable for the court to declare as the bill insists that they should, that he took no title under his said deed

VALUE OF THE LAND

In the opinion of this defendant at the time he accepted this deed from the complainant the price he agreed to pay for same was all it was

worth, and he would not have bought it even at the price if he had not had the assurance of S.H. Burnett~~e~~ the holder of the \$1900.00 debt assumed, by defendant that the latter should have ample time to pay the same.

Further answering, this defendant says, he is willing and ready to comply with any order the court may make relative to providing for the support of the complainant. Defendant is willing to enter into bond that he will pay each month or as the court may order such sum or sums as to the court seems ~~propet~~ for that purpose.

HOW THIS DEFENDANT ~~HAS~~ BEEN DAMAGED AND IS BEING DAMAGED BY
THE INJUNCTION GRANTED

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Answering further or rather stating to the court the effect of the injunction granted herein defendant shows that he is not living on the land deeded to him by complainant at this time, but has rented it to one Solomon Koonce, Jr. for the year 1925, who has arranged to move on the place, but under the injunction cannot do so. Defendant further shows that not being willing to rely on the force of the injunction some one interested has nailed up the doors to the house on the place. In addition to the above, cattle and other live stock have already damaged defendant greatly by eating the ungathered cotton on the place, which crop defendant could not gather, because of the injunction, therefore defendant has been and is being greatly damaged by the continuance of the injunction, and now having fully answered, this defendant prays to be dismissed.

Jerman & Jerman, Sols.

Jim Walker makes oath that the facts stated in his foregoing answer are true, of his own knowledge, except such as show they are made on information and belief, and those he believes to be true.

Sworn to and subscribed before me

This Dec. 31 1924.

Doyle Henderson,
C & M

Jim Walker

NO 1625

SOLOMON KOONCE

ANSWER OF

VS

JIM WALKER

S.H.BURNETT ET AL'S.

FILED DEC. 31 1924.

Doyle Henderson,

Clerk and Master.

SOLOMON KOONCE

VS

NO. 1625

S.H. BURNETT ET ALS.

ANSWER OF S. H. BURNETT

S.H. Burnett, one of the defendants, in the above styled cause, for answer to the bill filed by Solomon Koonce against this defendant and others, says:

Defendant admits that the complainant formerly owned something like 250 acres of land situated in the 8th. civil district of Crockett County, Tennessee, which land was as defendant has always understood, a gift from complainant's former owner, Isaac Koonce.

It is true as stated in the bill that the complainant had from time to time conveyed portions of said land to certain of his children, so that at the date of the conveyance from the complainant to Jim Walker, his son-in-law and Whit Koonce, his son, April 28th. 1920, complainant owned less than 100 acres.

The allegation contained in the first paragraph of the bill that "about 1919 the defendant, Sam Burnett, began to talk with complainant and advise him to give up farming and dispose of his land" is not true.

For a number of years prior to 1919, the complainant had not been engaged in business of farming further than to rent his land; he was too feeble and for years had been, to do manual labor. From the time Jim Walker married Annie, complainant's daughter, in 1905, until about the year 1918 or 1919, the said Jim Walker had been in possession of and cultivated the west portion of the tract of about 95 acres, about half of the tract, and the same land that was conveyed on April 28th. 1920 to him by the complainant. As rent for this portion of the land the said Jim Walker paid complainant each year; defendant Whit Koonce and his family have always, at least for many years, lived on the east portion of the farm, and occupied the residence known as the home place, with complainant. Whit was supposed to pay rent for this part of the farm, but according to the statements of the complainant he did not do so.

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As a result of his inability to work and the fact that he only received rent for the land cultivated by Jim Walker, the complainant for many years prior to 1919 had been getting deeper in debt each year.

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If, as alleged in the bill, this defendant at the time of this conveyance to Whit Koonce and the one to Jim Walker, April 28 1920, had wanted to take some advantage of the complainant by which defendant would become the owner of his land, defendant did not have to resort to any plot or scheme; he held mortgage^s on the entire tract of land to secure a debt of \$1500.00 which with interest, at the date referred to, amounted to something like \$2400.00 and he had desired to take some advantage of the complainant by which he would lose his land, defendant had only to foreclose his mortgage^s; not only did the complainant owe this defendant as stated, \$1500.00 with interest for about six years, which debt was secured by a trust-deed to this land, but in addition to this debt, the complainant also owed the defendant other debts which added to the mortgage debt amounted to about \$4000.00.

As stated in the bill, the complainant is quite old and is very feeble; it is also true that he is uneducated, and therefore, the complainant might be excused when he says that he did not owe the defendant anything, on the grounds of ignorance of failing memory; but in as much as the \$1500.00 mortgage and one prior thereto in favor of this defendant and also another mortgage in favor of P.G. Birmingham which was paid by this defendant at the request of complainant, were all of record, it is difficult to understand how it happened that counsel in his examination of the records was able to find a number of conveyances exhibited with the bill but overlooked several mortgages which show that the complainant had been for many years prior to 1919 largely indebted to this defendant.

Answering charges that the conveyances by the complainant and his wife on April 28th. 1920 to Whit Koonce and Jim Walker, were brought about by defendant for the purpose of defrauding the complainant and getting his land, the defendant shows that the circumstances so far as this defendant had anything to do with them were as follows:

As hereinbefore shown, the complainant was indebted to defendant to a large amount: \$1500.00 of the indebtedness with accrued interest for about six years, being secured by trust-deed to the 95 acres of land owned by the complainant which was all the land he owned. Complainant was anxious to so arrange his matters so as to secure what he owed the defendant and at the same time be secure in support for himself and aged wife. Not once, but many times before this matter was finally closed, complainant consulted the defendant about the matter. Defendant at all times assured the complainant that he did not want to press him for what he owed defendant; that he did not want to nor would he foreclose the trust-deed against the complainant's land so long as defendant could safely grant extension; after complainant's son-in-law, Jim Walker left the place in 1919, complainant's income from his land was very little; not sufficient to support complainant, his wife and the family of Whit Koonce, who lived on the place, and it became more and more necessary that some step be taken by which the old man and his wife would be supported.

Defendant considered the land good security for the debt that complainant owed him and the latter had frequently said that all he wanted out of the land was enough to pay his debts and furnish a living for himself and wife while they lived; the remainder he wanted his children to have: as he had already given his other children a portion of his property, he always said he wanted what was left to go to Whit and Jim Walker and his wife.

the best

Believing it ^{the best} possible solution of the matter, defendant suggested to the complainant the plan that was later carried into effect. That was:- If Whit Koonce and Jim Walker would agree to assume the debts which complainant owed this defendant, complainant to convey the land to them, Whit the east half and Jim the West half, on condition that they would support complainant and his wife while they lived and their burial expenses at death, provided, further, Whit and Jim Walker would execute a trust-deed on the land to secure their respective portions of the assumed indebtedness. This plan seemed to meet the approval of the complainant, and it was agreed that Whit and Jim be consulted, which was done, and after the matter was explained to them, they, Whit Koonce and Jim Walker readily agreed to the arrangement. But Jim Walker was

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not willing to assume half of the indebtedness; \$600.00 of the debt owed by the complainant to defendant was incurred solely for the benefit of another son of the complainant, Ike Koonce, and therefore Jim Walker insisted that he should not assume this \$600.00; but said he would assume one half of the remainder of the indebtedness. This was agreed to by the complainant, Whit Koonce and Jim Walker. The whole matter was thoroughly discussed and understood before any deeds were executed, and before the parties went to Maury City for the purpose of having deeds written. The exact sum that each would owe, that is Jim Walker and Whit Koonce, and for which they should execute note and mortgage on their respective tracts of land was fully understood before they went to Maury City. Interest being calculated to maturity of these notes, Jim Walker's part of the indebtedness was \$1973.95 and Whit Koonce's part was \$2504.90.

Defendant knew that it would not be possible for these parties to pay the entire debts they had assumed at maturity of their notes, but they were assured that so long as they paid the interest, paid the taxes, and took care of the land they would be pressed by the defendant, but that he would give them plenty of time in which to pay the debt; but knowing the quality of the land, and what it should produce yearly, defendant felt reasonably certain that these parties, Jim Walker and Whit Koonce if they should try, could meet the interest, taxes and support their parents out of the products of the land each year. In fact, if he had not believed this could be done he would not have agreed to surrender his security he already had and accepted a mortgage on the land second to the claims of the complainant amounting to \$400.00 yearly during the lives of himself and wife.

The allegation that either the complainant or his wife were induced by this defendant to execute said deeds to Whit Koonce and Jim Walker is absolutely untrue. In no way was this defendant to be benefitted by these transfers. He held a mortgage for over \$2000.00 the land was worth, subject to the homestead rights of complainant and his wife, the remainder of the debt, hence there was no reason why he should have induced complainant to make these conveyances except as a favor to this old man and his wife, who were in a manner helpless and who were his friends and he theirs. It is alleged in the bill that the

complainant wanted to make the deed to his daughter, Annie, and the insinuation is that this defendant had some ulterior motive in having it made to her husband instead. Such was not the case. Jim Walker was known to be industrious, and a sober man, a good farmer and one who met his obligations. Complainant was justified in believing that he would pay for the land if it was deeded to him.

Whether the matter was discussed between the complainant, Jim Walker and his wife, defendant does not know; but he does know that the complainant did not at any time during the discussion of the matter intimate that he wanted to make the deed to Jim's wife.

78 In as much as Jim was obligated himself to pay for the land, at its full value, it may be that he insisted that the deed be made to him; if so however, defendant knew nothing about it.

VALUE OF LAND

As stated by defendant in his answer filed in case No. 1624, he is of the opinion that at the time this land was conveyed to Jim Walker and Whit Koonce, sixty or sixty-five dollars per acre would have been about its cash value; on payments it would have probably brought seventy dollars per acre, if unincumbered, but with an incumbrance of \$400.00 during the lives of the Complainant and his wife the land would not have been worth that much.

The allegation is made that " Before leaving Neal's office defendant induced Whit Koonce and his wife and Jim Walker and his wife to sign and acknowledge trust-deeds conveying their lands to S.A. Booth to secure a debt of \$1900.00 assumed by Walker and \$2500.00 assumed by Whit Koonce."

Answering this allegation, defendant shows as heretofore in a former answer, that before parties except Annie and her mother went to Maury City all of them understood fully, that these parties, Whit and his wife and Jim Walker ~~\$\$\$\$\$\$\$\$~~ were to execute these trust-deeds; so no inducement was necessary; they simply carried out the agreement reached before going to Neal's office.

Answering the allegation that on the 5th. day of May 1924 the de-

defendant S.A. Booth as trustee, pretended to sell the Whit Koonce tract to defendant, S. H. Burnett for \$2470.. and made him a deed etc., defendant shows that the said Whit Koonce having failed to keep his interest paid, allowed taxes on the land to become delinquent and showed no inclination to pay his note, the said S.A. Booth, trustee, by request of Bank of Alamo the legal holder of the note, foreclosed the trust-deed by sale of the property and this defendant who endorsed the note to said Bank, became the purchaser at the price stated and the trustee executed deed as was his duty.

It is further alleged that on Jan. 1st. 1922, Jim Walker and his wife reconveyed to said Booth, trustee, the Walker tract to secure said Burnett in a debt of \$2077.80 etc."

79 In answer to this allegation defendant shows that what the complainant designates as a re-conveyance was simply the execution of a renewal trust-deed to secure a renewal note. As the original note was ^{as-}signed to the Bank of Alamo and the latter required a current note, Walker simply renewed his note and executed another trust-deed to secure same and the first trust-deed was properly satisfied of record by the holder of the note, the Bank of Alamo.

Defendant emphatically denies the numerous and oft repeated charges and insinuations contained in the bill to the effect that this defendant concocted a plot or scheme by which he was to cheat and defraud this old colored man out of his property, and that he carried out said plot by having complainant and his wife execute deeds to Walker and Whit Koonce and has continued said fraud by having these several conveyances executed, some of them kept off the record etc. Each and every one of these charges and insinuations are false and without the slightest foundation in truth or reason.

AS TO DESCRIPTION OF THE WALKER TRACT

Evidently not having great faith in his charge of fraud against this defendant, it is next insisted that in his deed to Jim Walker from the complainant and his wife no title passed for two reasons:- First, because the land is not described in that the deed fails to show the county and district in which it is located. While the deed does not show the district and county in which the land is located, still defendant insists that this is not under circumstances a fatal defect.

The land conveyed to said Jim Walker was well and familiarly known

to not only the direct parties to the conveyance, but by every one in that neighborhood, as the western half of the home place of the complainant, Solomon Koonce, and a part of the Isaac Koonce land; which as shown by the bill, was originally in Haywood County, but now in the 8th. Civile District of Crockett County. The Complainant^s understood fully what land he was conveying and the vendor, Jim Walker fully understood what land he was getting under said conveyance. The failure to have the deed show as it should, the county and district where it was located was an error of the draftsman, J. M. Neal and such error, defendant insists as can be cured by evidence.

80 The description in the deed calls for a number of lines and corners of other tracts which are well known in the community where the land lies, and from these descriptions, said land can be easily identified. Said calls and descriptions are as follows:

"Beginning at southwest corner of a 5 acre tract of land deeded to Charlie Koonce, runs thence east 33 1/2 poles; thence south 216 poles to A.P. Moore's north boundary line; thence west 35 1/2 rods to Charlie Koonce's S.E. corner; thence North 216 rods to the beginning, containing 46 7/8 acres more or less."

The 5 acre tract deeded by complainant to his son, Charlie Koonce, called for in the first and third call and the A.P. Moore tract called for are well known tracts of land and known to lie in the eighth civil district of Crockett County; so that there is no^s difficulty in identifying the Jim Walker tract from the description given in the deed although the district and county are omitted.

It is next insisted that no title passed to the said Jim Walker for the further reason that the grantors retained title to the land.

An inspection of the deed will show that the clause relied upon to support this contention does nothing more than create a lien on the land conveyed to secure the grantors in a support and also, TO PAY THEIR BURIAL EXPENSES. That the matter was so understood by all parties to the conveyance and was acted upon by them will be fully shown by the evidence.

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Each and every charge, allegation or insinuation contained in the bill, against this defendant, not already specifically denied is now and here denied generally.

And now having answered fully, this defendant prays to be dismissed.

S.E. Burnett

Jermon & Jermon

Sols.

NO. 1625

SOLOMON KOONCE

ANSWER OF

VS

S.H. BURNETT

S.H. BURNETT

ET ALS.

FILED FEB. 7th. 1925

Doyle Henderson,

C. & M.

SOLOMON KOONCE

VS

NO. 1625

S.H. BURNETT ET ALS.

ANSWER OF S. A. BOOTH

S.A. Booth, named as defendant in the above styled cause, for answer to the bill says:

He admits he is named as trustee in a conveyance executed by Jim Walker and wife to certain real estate as security to a note in favor of S. H. Burnett, dated April 28th. 1920, a copy of which conveyance is filed as exhibit B to the original bill.

As shown by the conveyance, this defendant is simply made trustee and he had and has had no other interest in the transaction.

Defendant knew nothing whatever about the transaction alleged to have taken place between the complainant and Jim Walker prior to said conveyance, and was not so much as consulted about being named as trustee.

93 Neither does this defendant know anything whatever about the alleged transactions between the complainant and S.H. Burnett relative to said real estate.

The allegations, charges and insinuations contained in the bill to the effect that this defendant, in some way, was a party to some fraud practiced on the complainant in connection with said transfer is absolutely and unqualifiedly false and are wholly gratuitous.

And now, having fully answered fully, this defendant prays to be dismissed with his costs.

S.A. Booth

By. Jerman & Jerman, Sol.

NO. 1625

SOLOMON KOONCE

* ANS. OF

VS

* S. A. BOOTH

S. H. BURNETT

FILED FEB. 7th. 1925

DOYLE HENDERSON,

C. & M.

Solomon Koonce,

Vs.

No.1624.

Whit Koonce,et als.

And.

Solomon Koonce,

Vs.

No.1625.

Sam H.Burnett,et als.

CONSOLIDATION OF 1624 and 1625.

On motion and by consent of all parties, and it appearing that these two cases relate to the same subject matter; it is ordered by the Court that they be consolidated, and considered and heard to-gether, that the proof taken or filed in either case may be read as to both causes.

MOTION OF COMPLAINANT TO AMEND ORIGINAL BILLS.

Solomon Koonce,

Vs.

No.1624.

Whit Koonce,et als.

And

Solomon Koonce,

Vs.

No.1625.

S.H.Burnett,et als.

Motion of Complainant to amend the said bill,the cases having been consolidated and to be tried together.

In the above mentioned causes,W.F.Poston,the Solicitor for the complainant moves the Court to be permitted to amend said bill as follows: number 1624,commencing on page 7 on the 18th line counting from the bottom of the page,counting towards top after the words on the 18th line,"out of his lands" that he was sick,weak in body and mind and was overreached by said Burnett and induced to sign said deeds when he was incapacitated to contract and said Burnett knew it.

In number 1625 commencing at the end of the 6th line,apge 6 counting from the bottom up on page six of said bill and insert, that when he made his mark to said deed,he was sick,weak in body and mind and incapacitated to contract and was overreached by said Burnett to sign said deeds mentioned in said bill.

The petitioner W.F.Poston sole solicitor for complainant states that the complainant is a very old,decreped man in his 99th year,very feeble in mind and body,incapacitated to contract was in his dodage and had had a severe spell of sickness just a short time before the execution of said dedd;which sickness the affiant had no knowledge until about two weeks age.That said sickness was a leading factor in disability of the complainant to contract. That the complainant lives about eight miles from the office of affiant,not able to get out much and further the affiant has not seen him but twice since the filing of the bill and he did not have the opportunity to better acquaint himself with the real condition of the complainant.

Petitioner states that the proposed amendments are pertinent to the controversy and will enable the plaintiff to better present his case to the Court and enable the Court to better understand the controversy and do complete justice to the parties and said amendments is consistent with the prayer of the bill.

No proof has been taken, and the case by an agreement is to be tried before the Court on oral testimony. The amendment is asked for in good faith and he charges it is necessary to enable him to better present his case to the Court and is consistent with the general tenor of the bill, but it was not known to affiant at the time he drafted the bill. That this the first opportunity to make this application after the affiant learned of the facts embraced in the amendment.

Petitioner prays for general relief.

W.F.Poston.

86 W.F.Poston makes oath in due form of law that the statements in the foregoing petition are true to the best of his knowledge, information and belief.

W.F.Poston.

Sworn to this Nov.30th,1925..

Doyle Henderson.

C.& M.

The foregoing petition was this the 1st day of December 1925 heard by the Chancellor after argument and the same being understood by the Court, said amendments were allowed as set out in the petition and amendments ordered to be spread on the minutes.

ORAL TESTIMONY BEFORE THE CHANCELLOR IN OPEN COURT.

SOLOMAN KOONCE.

First Witness complainant Solomon Koonce.

Q. Uncle Sol what is your age?

A. I dont know exactly-about one hundred years old.

Q. Where did you get the land that is involved in this law suit?

A. My old master gave me 250 acres.

Q. How long have you known defendant Burnett?

A. All of his life.

Q. Who is Jim Walker?

A. He married my daughter Annie.

Q. Did you know S.H.Burnett's father?

A. Yes.

Q. Can you read or write?

A. No.

Q. Did Aunt Cherry, your wife, have any education?

A. No.

Q. Is the land that Jim Walker and Whit Koonce been cultivating a part of the land your old master gave you?

A. Yes.

Q. How long did you know J.T.Burnett, father of the defendant Sam Burnett?

A. All of his life.

Q. What kind of business did you follow?

A. Just farmed-- couldn't do anything else.

Q. Did you ever owe S.H.Burnett any money?

A. No sir, if I ever did it was a few dollars a long time ago,

Q. Did you ever borrow any money from him?

A. No.

Q. State whether you ever gave him a note?

A. No.

Q. State whether you ever gave Burnett a mortgage on this land or any other land?

A. Why no--didn't have to do it.

Q. How come you to make the deeds of Whit Koonce and Jim Walker to the land involved in this suit?

A. Burnett told me to do that--he talked to me often about it.

Q. Who suggested dividing the land giving Whit part and Annie a part?

A. Burnett did that.

Q. Who suggested and arranged the matters having the land run off and divided?

A. I don't know unless Burnett did.

Q. Was Burnett your friend and adviser?

A. Yes, I reckon you would call him that--he is the only one that ever talked to me about it.

Q. Are you positive that you never borrowed any money from Burnett?

A. I know I did not.

Q. Are you positive that you never gave him a mortgage for money or anything else?

A. No, if I did I didn't know it.

Q. How long has it been since you were able to do any work?

A. A long time.

Q. What is your physical condition--are you strong or weak?

A. I feel mighty bad.

Q. Did you ever speak to any of your children about making these deeds to Whit and Jim Walker?

A. No. Burnett is the only one that ever spoke to me about it.

Q. State whether you have ever give up the place where you are living to Whit?

A. No it is my place and not his.

Q. Did you ever give Jim Walker a deed to his place?

A. No, When Burnett was talking to me to do this he said give it to Annie. Jim's name was not called.

Q. Did you ever go to Maury City and have the deeds fixed?

A. No, if I did I have no recollection of it.

Q. How is your recollection?

A. Not good--I cant remember nothing much.

Q. What did Mr. Burnett tell you about the land?

A. He said if I would do like he said I would not have to work any more, that Jim and Whit would pay me and my wife all the money we needed.

Q. Did you know that the surveyor was coming to run the land off?

A. No.

Q. Did you send for him?

A. No.

Q. Did you know who he was?

A. No.

Q. State whether Burnett came to see you often?

A. Yes, every few weeks I would see him.

Q. Did you ever buy a binder and mower from Frank Robertson?

A. I don't know.

Q. Did you ever own one?

A. Yes, but I don't know who I got it from.

Q. I ask you if you didn't buy a binder and mower from old Squire Robertson for \$800.00 and give a mortgage on your land for the payment of it?

A. If I did I don't remember it. I had a mower and binder.

Q. State whether Mr. Burnett was anxious for you to turn the land over to Whit and Jim Walker?

A. He said he wanted me to do it. He said if I said so he would fix it all right and they would support me and we could have everything we wanted.

Q. Did you pay any expense in surveying, making deeds to said land to Jim Walker and Whit Koonce?

A. No.

Q. State whether you and Aunt Cherry, your wife, went to live with Jim Walker and Annie?

A. Yes, but he drove me off and was not good to me--I couldn't stay there.

Q. Was that before or after he came back from Carroll County?

A. It was after he came back.

Q. How does Whit and his family treat you?

A. Good.

Q. Do they treat you all right--kind to you?

A. Yes.

Q. Whose place is it that you live at now?

A. Mine.

Q. Who lives with you?

A. Whit and his family.

Q. State how Burnett has treated you in the last few years?

A. Bad, last year he cursed me and called me a dam fool.

Q. Does he ever come to see you now?

A. No.

Q. Was you with Burnett and the surveyor the day the land was run off?

A. They carried me down there in a buggy, I don't know who drove it.

Q. State whether you ever signed a note for Mr. Burnett for him to get money at Jackson?

A. Yes, he came to me to do that.

CROSS EXAMINATION OF SOLOMON KOONCE BY MR. JERMAN.

Q. Didnt you make a mortgage in 1904, conveying this land you have been talking about, to secure a note of \$595. which you executed to S.H. Burnett?

A. I dont remember whether I did or not.

Q. Afterwards didnt you buy hay and corn and supplies and get money from Burnett all along--every year?

A. No sir--not that I remember of.

Q. Didnt you make a mortgage in the year 1900, to secure a note \$636. to Oscar Birmingham-- and convey this land we are talking about to secure that note.

A. No sir--not that I remember of.

Q. Did you make a mortgage in 1912, to secure a note of \$1500. which you executed to S.H. Burnett and convey this land to secure that note?

A. No sir--not that I remember of.

Q. Did you ever get any money at all from Mr. Burnett?

A. No sir.

Q. Didnt you give Mr. Birmingham a second mortgage--second to Mr. Burnetts, in 1912, to secure him, in a note of \$600. and convey this land for that purpose?

A. No sir, not that I remember.

Q. Where were ^{you} Uncle Sol the day they ran this land off, at the time you made these deeds to Whit Koonce and Walker?

A. I was out there. I drove in a buggy and they run the land off.

Q. Didnt you make a trip up to Carroll County--McKenzie--where Jim Walker and your daughter Annie Walker were living, shortly before you divided this land and tell them that you wanted to divide the land as you later did?

A. I went up there, but I dont remember saying anything to them about dividing the land.

Q. Did you have anybody write up there and tell Jim Walker to come down here, when you had the land run off and divided?

A. No sir.

Q. Did you tell Whit Koonce and Jim Walker you would convey this land, if they would assume and pay your indebtedness to S.H. Burnett?

A. Not that I remember.

Q. Well why did you take the deeds to them?

A. I had given four of my children the 100 acre tract joining this land-- 25 acres apiece and they agreed to pay off the mortgage against it, so I gave this land to Whit Koonce and Jim Walker.

Q. What mortgage?

A. A mortgage on the 100 acre tract I divided between, Charlie and Ike and Ned Koonce and Tom Postons wife, she is by daughter.

Q. How much was that mortgage?

A. Four Hundred Dollars (\$400.00).

Q. When was the mortgage made?

A. I dont remember.

92 Q. You made the mortgage didnt you?

A. Yes sir.

Q. Did you pay it off ?

A. No sir.

Q. So that land you gave Charlie, Ike and Ned Koonce and Tom Postons wife had a mortgage on it when you conveyed it to them?

A. Yes sir.

Q. And they assumed and paid that mortgage?

A. Yes.

Q. Now this 100 acres you have just mentioned was conveyed to Charlie, Ike and Ned Koonce and Tom Postons wife, before you divided this last tract between Whit Koonce and Jim Walker wasnt it?

A. Ye sir.

Q. And on the same day you divided this land between Jim Walker and Whit Koonce you gave Charlie Koonce a five acre parcel didnt you?

A. Yes sir.

Q. Shortly after you made these deeds to Whit Koonce and Jim Walker, Jim Walker moved down here from Carroll County, didnt he?

A. Yes sir.

Q. Moved on to the tract of land you convyed him, didnt he?

A. Yes sir.

Q. And you and your wife Cherry Koonce moved in the house with Jim Walker and Annie, didnt you?

A. Yes sir.

Q. And your wife Cherry lived there with them until she died, didnt she?

A. Yes sir.

Q. And you lived with them seven months after ~~your~~ her death didnt you?

A. I dont remember exactly how long I stayed there after she died.

Q. About seven months wasnt it and then you moved to Whits?

A. After I left Walkers I went to Whits.

Q.

WHIT KOONCE.

The next witness introduced by complainant was Whit Koonce, age 49 years.

Q. Are you one of the defendants of the Solomon Koonce?

A. Yes.

Q. Where are you living?

A. With my father as I have always lived with him and never left home.

Q. What size family have you?

A. Wife and three children, the oldest 16, 14 and 4.

Q. How many children did your father have?

A. Six.

Q. Name them?

A. Charlie, Ned, Liza, Ike, Annie and myself.

Q. Who is the oldest?

A. Charlie?

Q. Who is the youngest?

A. I am.

Q. Who is the next youngest?

A. Liza.

Q. You remember the time Mr. Burnett and Mr. Cox went down to your place and running a dividing line through the 95 acres of land, laying you off half and Jim Walker off half?

A. Yes sir.

Q. When did you first know the land was to be divided?

A. I didnt never hear nothing about it. I saw Mr. Burnett and some other parties up there in the filed and I went up there and Mr. Burnett was fixing to have the land run off.

Q. Had you ever heard anything about it before that morning?

A. No.

Q. Who was up there?

A. Mr. Burnett and a surveyor, I forget his name, I think Mr. Cox

and one or two other boys.

Q. What did he tell you to do?

A. Hitch up to the buggy and bring the old man (Pap) out there.

Q. Did you do that?

A. Yes I did.

Q. You carried him out there in a buggy?

A. He had a long spell of sickness and wasnt able to walk.

Q. Had Mr.Burnett ever said anything to you in any way whatever about your fathers condition?

A. No.

Q. Now tell just what was done there that day?

A. Well,first run all around the tract of land by Charlies and Ikes and Tom Postons house and then run a dividinh line through it giving about-- little over 46 acres and giving Whit the remainder-- a little over 46 acres.

Q. Who was directing and bossing the whole thing that day?

A. Mr.Burnett.

Q. Did you or any of your fathers son or anybody else have anything to say about the matter except Mr.Burnett?

A. No.

Q. After the land was run off what did you do?

A. Mr/ Burnett took Mr.Cox and went up to his house to dinner told me to get Pap and for me and my wife to go down to Maury City to do some writing about the land. He didnt tell me what . We went and Mr.Burnett told us what he wanted done and Squire Neal wrote the deed to me for Pay and Mammy to sign. Mr.Burnett signed their names to the deed and Pap made his mark,Mammy wasnt there.

Q. Well what become of the deed?

A. I dont know Mr.Burnett took charge of them.

Q. Well,did he ask you to do anything?

A. Yes,he said Pap owed him a big amount of money-- that he had a mortgage on all this land to secure a note and said Pap wanted me and Jim to make a deed to the land and secure the payment of the debt and that I would have to give a mortgage

on my part of the land to secure about over \$2405. that would be my part to pay and that he would give me as long as I wanted to pay it in. Said Pap had got too old and feeble to do anything or to look after it and he had got him to make that sort of arrangement and that Jim Walker part of the deed would be about \$1900. and that Jim was going to give a mortgage on his part to secure the \$1900.-- and that he would give us both as much time as we wanted to pay it in. That it was the best thing the old man could do as him and Hunt Cherry was very old and feeble and had no more cares so he took ~~mine~~ and Jims note for the deed and the mortgage on the land.

Q. Who paid the expense of the surveyor and the writings the deeds?

A. Mr. Burnett did.

Q. Are you opposite in any way?

A. No sir.

Q. Did you ever take possession of the land?

A. No.

Q. Where do you live?

A. With my father like I have all my life.

Q. Did he ever turn you over the tract of land deeded you?

A. No.

Q. Have you ever paid him any rent on the land since that time?

A. No.

Q. Have you ever paid him anything for support on the contract that you and Jim Walker signed that day ?

A. No.

Q. Did you ever pay any part of that \$2400. note?

A. No. Mr. Burnett traded the note to the Alamo Bank and I paid the Bank interest I think for two years and last May Mr. Booth the Trustee sold the land and Mr. Burnett bought it and Mr. Booth made him a deed to the place. That is the place where Pap and

I are now living and have lived all my life.

Q. Who took possession of the deed that your father made you at Maury City?

A. Mr. Burnett did.

Q. What did he do with it?

A. I dont know.

Q. Have you the deed?

A. No sir, pap as it were did have it and sent it to Mr. Poston.

Q. Did you ever know of your father borrowing any money from S.H. Burnett?

A. No sir.

Q. Did you ever him spaek of borrowing any money from him?

A. No sir.

Q. Are you educated?

A. Some what.

Q. Can you read and write?

A. Very well.

Q. Did you ever see any paper which you father had signed by mark or otherwise?

97 A. I dont remember that I did. Mr. Burnett come over and wanted Pap to go his security on a note to the Jackson Bank for \$ six or eight hundred dollars, but I am not sure whether he agreed to do it or not.

Q. What kind of land of the 250 acre tract that Mr. Koonce give your father?

A. It was very fine land, not much ever cleared at the time, but had very fine timber on it.

Q. Did your father build on it?

A. Yes sir, built a double log house with eight feet passage between and years after we cut timber and weather boarded it.

Q. Who bulit the house?

A. Pap and my older brother.

Q. Where did they get the lumber to build it?

A. They cut it off of the land, board, trees and all and done the work.

Q. Has he ever improved that house any?

A. No sir.

Q. What part of the house does he occupy?

A. Him and Mammy occupied the west room and we boys occupied the east that me and my wife, we have a good room attached.

Q. Did you father ever build any barns or make any other improvements on the land?

A. No, except the log stables covered with boards.

Q. Did he ever buy any machinery at any time?

A. No, except away back he bought a binder and mower from Mr. Robertson.

Q. What kind of farm did your father own when you were growing up to be a boy?

A. It was very fine, said to be one of the best farm in the country.

Q. What did your father raise on it?

A. He raised, corn, cotton, wheat and oats.

Q. Did he ever have corn to sell?

A. Yes most always had corn to sell.

Q. What about cotton?

A. Well always made cotton, more some years than others, sometimes had oats to sell.

Q. Ever have any wheat to sell?

A. I don't remember about that.

Q. What kind of stock if any did he raise?

A. Well he raised colts, cattle and hogs.

Q. State whether he ever had cattle, hogs or colts to sell?

A. Yes sir he had to brood mares, sold colts from them, most always had hogs to sell and two or three yearlings every year.

Q. Did he ever give any you children any money?

A. No, that I ever heard of, unless it was a dollar or two at a time.

Q. Did he ever give his daughters anything?

A. He sent her one year to Roger Williams school at Nashville.

Q. Did you ever know of him contracting any debts anywhere?

A. None except that binder debt, yes he did buy a horse for Ike from Mr. Childress and gave a note for \$200.00 for Ike and he had to pay it.

Q. What was your fathers condition physically, mentally at the time he executed the deeds on the 28th of April 1920?

A. Well he had been in a very bad fix for years and just a few weeks before the land was run off he had a very bad spell of sickness that lasted him about three weeks, in fact we all thought he was going to die and sent for the children to come in and has been very feeble every since and long before.

Q. What was his mental condition?

A. It hasnt been good for a long time, he cant remember nothing and repeats so often.

Q. What is his age?

A. The best we can get it, he is 100 years old now.

Q. Who has been keeping him up, boarding him and clothing him since he left Jim Walkers?

A. I have.

Q. Has Jim Walker ever contributed one cent to him since he has been at your house?

A. No sir.

Q. Who paid the funeral bills and doctors bill of Aunt Cherry when she died?

A. Jim Walker and myself. I paid \$46.00 I think I lacked a little paying half of it. Jim Walker paid the other half.

CROSS EXAMINATION BY MR. JERMAN.

Q. You went into possession of your tract of land immediately after the land was divided, didnt you?

A. No sir. He was on the place at the time. I lived with my father-- all my life--I never did have possession of the place--I lived there and work it now just like I always did.

Q. You have been in possession every since 1920 havent you, holding on to your deed?

A. I have been living there every since--just like I did before but Pap says it is his land and not mine.

Q. You knew why you was making this mortgage to secure Burnetts debt of \$2405.?

A. Yes I knew I was making it for giving a mortgage on the land that pap deeded to me. Mr. Burnett said that if I paid the debt off the land would be mine.

Q. You tried to borrow money on this land to satisfy this mortgage?

A. Yes sir. I tried to borrow money on it but everybody I talked to about it said that on account of the life estate and right against they couldnt.

Q. Land on the mortgage was finnally foreclosed, wasnt it?

A. Yes sir I was there when it was sold.

Q. Where has your Pap been living since he left Jim Walkers?

A. With me or me with him just as you may call it.

Q. Has he been paying you any board?

A. No sir.

Q. Have you paid the taxes since 1920?

A. I paid them one year.

Q. The Bank of Alamo held your mortgage when it was foreclosed, did it not?

A. Yes sir.

Q. You say you paid interest on the \$2405. two years, to whom did you pay this?

A. To the Bank of Alamo.

Q. You got the money from Oscar Birmingham to pay this didnt you?

A. Yes sir.

Q. Didnt Uncle Sol buy hay and corn form Mr. Burnett?

A. No sir we raised plenty of that.

MABEL KOONCE.

The next witness for complainant Mable Koonce wife of Whit Koonce being duly sworn testifies as follows:

Q. While Uncle Sol was staying at your house, after he left Jim Walkers, did S.H. Burnett ever come to see him?

A. Yes sir.

Q. Was he living at your house at the time the land was divided?

A. Yes sir.

Q. How did they act when he came there?

A. If they had any business to talk they always went out of doors or shut the door.

Q. Do you know what they talked about?

A. No sir.

Q. What condition was Uncle Sol in at that time?

A. Oh: he was very feeble, scrasely able to get about.

Q. Has he improved any.

A. No sir.

Q. Did S.H. Burnett come to see him often?

A. Yes sir ~~xxx~~ pretty often.

Q. When he come to see him would they sit and talk in your room or in Uncle Sols room?

A. Always in Paps room unless they went out in the yard.

Q. State whether Mr. Burnett continued to visit Uncle Sol after he made the deeds to your husband and Jim Walker?

A. No sir he did not.

Q. State whete if you know whether Uncle Sol ever borrowed any money from Mr. Burnett?

A. If he did I never heard of it.

Q. Did you ever know of him buying any flour, wheat, corn, hay or anything else from Mr. Burnett?

A. No sir I never heard of it.

Q. State whether Uncle Sol was very fond of Mr. Burnett before the deeds were made to Whit and Jim?

A. Yes sir he thought there was nobody like him.

Q. When did you first hear that the land was going to be divided between Whit and Jim Walker?

A. I never heard it at all, the first thing I knew I saw Mr. Burnett and the surveyor fixing to run the line.

Q. And you read the right?

A. Yes sir.

Q. State whether during last year you saw Mr. Burnett at the corner of your yard talking to Uncle Sol at the big gate?

A. I did.

Q. What was he saying to him?

A. I dont know- when Pap come in the yard he was crying, said that Burnett was cursing him, called him a dam fool, and he couldnt sleep that night--crying all the night.

Q. How far does Mr. Burnetts line run from your house?

A. Thirty or forty yards.

A.P.MOORE.

Examination of A.P.Moore witness for complainant, after being duly sworn testified as follows:

Q. Are you related in any way to the complainant Solomon Koonce, if so, how?

A. I married his neice, she was a widow when I married her.

Q. Was you living on a part of the two hundred fifty acres of land that Isaac Koonce gave the complainant?

A. Yes sir.

Q. How far was you living from the complainant at the time the 95 acres were divided between Whit and Jim Walker?

A. Four or five Hundred yards.

Q. Was you present when the lines was run on the 28th day of April 1920?

A. Well I saw them down there and I did not know what they were doing and I went where they were at work.

Q. Who was at work?

A. Mr. Sam Burnett and the surveyor.

Q. Did you know anything about the land going to be dived or Uncle was going to make Whit and Jim Walker deeds to it?

A. No sir, I went down there but no one told me what they were going to do and I never heard of the deed transaction for two or three weeks after it was done.

Q. Did you ever hear from any source that the complainant owed Mr. Burnett any money for anything?

A. No sir, I didnt think he owed anything to anybody.

Q. Are you educated?

A. Yes sir, pretty well.

Q. Are you guardian for step children?

A. Yes sir.

Q. Does your wifes land join the 95 acre tract in dispute?

A. Yes sir.

Q. Do you remember the spell of sickness that the complainant had just before he made these deeds to Whit and Jim Walker?

A. Yes sir, very well, we thought he was going to die and sent for all the children and grandchildren.

Q. What was his condition before he had that spell of sickness?

A. Well he has been in a mighty feeble condition for several years before that, he did not have much recollection, his health was bad and he could not go about by himself and the family would not let him go out alone, he was too feeble.

Q. What was his mental and physical condition after that spell of sickness?

A. It was worse. He has been all the time like he is now.

Q. What was his condition on the day the land was divided by Mr. Burnett and Mr. Cox as compared today?

A. It is about the same, he can't remember very well and sometimes don't know me at first, his mind has not been good since.

Q. How long has it been that he was too weak and feeble to do any work?

A. Not since Jim Walker and Annie married, he could not go around by himself.

Q. Did you ever hear of him having any trouble or misunderstanding with any of his children?

A. No sir he was friendly with all of them, go to see them.

Q. How did he like Mr. Burnett?

A. Oh well he thought more of him than anyone, he went to see him about everything, he relied on Mr. Burnett about all business.

Q. Are you on good terms with Mr. Burnett?

A. Yes sir we always got along fine.

Q. What kind of farmer was Uncle Sol?

A. He was a good farmer, got along well.

ADA MOORE

Next witness for complainant Ada Moore wife of A.P. Moore, after being duly sworn testified as follows?

Q. How far did you live from the complainant on the 28th of April 1920?

A. Close by, some four or five hundred yards.

Q. Did you see him often about that time?

A. Yes every day or two, he had a hard spell of sickness and we thought he was going to die and I went every day nearly.

Q. How long was this before the day the land was divided between Whit Koonce and Jim Walker?

A. About two or three weeks.

Q. What was the matter with him?

A. He had Flu and fever.

Q. What was his mental condition at that time?

A. It was no good, he would not know me sometimes.

Q. How long has he been in a feeble, weak condition?

A. Several years before that.

Q. Did you ever hear of complainant owing Mr. Burnett any money for anything?

A. No sir, he didnt owe anything so he said.

Q. Did you ever see Mr. Burnett go there and talk with him?

A. Ye s sir, I have been there when Mr. Burnett would come in and go in his room and shut the door.

Q. How long would he stay?

A. Well some little bit and sometimes not so long.

Q. State whether his mental condition is better or worse now than it was then at the time the land was divided between ~~Jim~~ Jim and Whit?

A. It is about the same, someone has stayed with him/ all the time he cant go anywhere by himself, he has not been able to go by himself for years.

Q. Has he been able to do anything since Jim and Annie Married?

A. No sir. Well for a few years after they married he could do a little work in good weather.

Q. Just when did you hear of the deeds being made to Jim and Whit?

A. About two weeks after they were made.

DOCTOR EFFORT TO GET HIS WIFE'S NAME.

IKE KOONCE

Complainant the introducing Ike Koonce adter being duly sworn testified as follows:

Q. What is your age?

A. 52 ~~years~~ years.

Q. You a^{son of} Solomen Koonce?

A. Yes.

Q. Are you educated?

A. Yes tolerably well.

Q. How far do you live from your father Solomon Koonce?

A. On the same farm,- insight-about a quater of a mile.

Q. How far does the son Charlie and Liza Poston live ?

A. Not a quarter of a mile from each one of them.

Q. Is your father and all of his children on good friendly terms and always have been?

A. Yes sir.

Q. How much land did he give you?

A. Well he owed about \$400.00 way back younder in 80--87 I think and he gave me, Charlie, Ned and Tom Poston 25 acres apiece and we paid it off \$400.00, I think it was for a binder.

Q. Was you present when the land was run off and divided between Whit Koonce and Jim Walker?

A. A part of the time I was.

Q. Had your father ever said anything about it to you?

A. No.

Q. Had you ever heard him mention such a thing?

A. No.

Q. How come you there?

A. I saw Sam Burnett and them out there in the field and I went out there to see what they were doing.

Q. Did your father talk to you about the matter and tell you what they were doing?

A. No sir.

Q. Did he tell you before hand that he was going to divide the land?

A. No sir.

Q. Who was supervising and directing the surveying of the land?

A. Mr. Burnett was. He was showing them where the lines were and telling them what to do.

Q. Was there ever any trouble between your father and his children?

A. No.

Q. And they all read and write?

A. Yes.

Q. Did you ever know your father to go in debt for anything except a binder?

A. No.

Q. Did you ever hear of him borrowing any money from Burnett?

A. No.

Q. What did you raise on that farm?

A. Corn, Cotton, Wheat, oat and stock.

Q. Did your father ever raise colts to sell?

A. Yes sir had two brood mares, and sold colts from them.

Q. Did he ever sell any other stock from that farm.

A. Yes he sold yearlings and hogs almost every year.

Q. What kind of crop did he make?

A. Always made good crops, corn, cotton and wheat.

Q. How much cotton did he make?

A. Well I dont know- sometimes not over four or five bales and sometimes ten, good crop of corn, sold corn often.

Q. Did he ever give any of his children any money?

A. No sir.

Q. Did you every know of him buying anything except the necessities of life?

A. Well he bought a buggy and had a wagon and farming tools.

Q. When did you first hear of making Jim Walker and Whit a deed to their land?

A. It was two or three weeks after the transaction.

Q. Did any of the children know at the time he was making the deed what he was doing?

A. No sir, except Jim Walker and Whit Koonce and they went with him.

Q. Who did your father trust and rely on in all his business matters?

A. Sam Burnett.

Q. Did Mr. Burnett ever mention to anything about the transaction?

A. Nothing whatever before or since.

Q. Did you ever write Jim Walker while he was Carroll County at the instance of your father to come down here and see about dividing the land?

A. No sir, I never mentioned such a thing to any and I never wrote such a thing.

CROSS EXAMINATION BY MR. JERMAN.

Q. Who knew they were going to run the line, didnt you Ike?

A. No sir I didnt know it.

Q. Your father had deeded you a tract of land, didnt he?

A. Yes sir.

Q. That tract he conveyed you had a mortgage on it when he made the deed, didnt it?

A. Yes sir.

Q. Your father borrowed \$600.00 from Oscar Birmingham, didnt he and made the mortgage on the land to secure it, didnt he?

A. Yes sir and I paid him back.

Q. This was in 1912, wasnt it?

A. I dont know exactly ~~any~~ somewhere about that.

Q. And the land he made mortgage on was the same land that he divided between you and Whit, wasnt it?

A. Yes sir.

Q. Did your father ever give you and the children any money?

A. No sir.

Q. Has he ever spent any money on improvements in the way of house and barn in the last thirty years?

A. No.

Q. Who seemed to be directing and managing and surving and dictating the running off of the lines?

A. Mr. Burnett.

Q. What was your fathers condition 28th of April 1920 when he made the deed to Jim Walker and Whit Koonce-- ~~am~~ I mean physical and mental?

A. He was in very bad condition, he hasnt been right in several years very feeble--not able to get about and do any work and just two or three weeks before he made these deeds he had a hard spell of sickness and everybody thought he was going to die in fact we sent for all the children and his mental condition was bad as well as his physical condition.

He couldn't remember anything scarcely, talked at random.

Q. What was his condition then as compared to now?

A. About the same, hasn't been much change in ten years.

CHARLIE KOONCE

Next witness for complainant Charlie Koonce, age 47, a son of complainant after being duly sworn testifies as follows:

Q. Were you present when the line was run dividing the land between Jim Walker and Whit~~y~~ Koonce now in controversy?

A. Yes I went down there.

Q. Who was directing and controlling the matter?

A. Mr. Burnett.

Q. Had you ever heard anything about it until that day?

A. No.

Q. Can you read or write?

A. Yes.

Q. What kind of land is that 250 acres that Mr. Koonce gave your father?

A. It was a very fine piece of land.

Q. Did you father ever buy any other land?

A. No.

Q. Did he ever make any investment anywhere?

A. No.

Q. What kind of crops did he make on that land?

A. Fine crops, we boys all stayed there and worked there until we were twenty one and then he would settle us off on some place on the farm.

Q. State whether he raised stock for sale and if so what kind?

A. Well he raised colts, cattle and hogs for market?

Q. What kind of crops did he make?

A. Corn, cotton and wheat and sometimes he would sell yearlings and hogs.

Q. Did he ever own any debt that you have heard tell of?

A. He owed one debt of \$400.00 that we paid off when we got deed to our land. I think it was for a binder.

Q. Your father ever spent any money improving his place any in the way of barns and houses ?

A. No when he let us have our homes he done like Jim Walker, he let us cut timber and haul to mill build our own houses.

Q. Did you ever hear of him contracting any debts anywhere?

A. No sir.

Q. Did you ever hear of him owing Mr. Burnett anything?

A. No, he did to Ike to Mr. Birmingham a debt of five or six hundred dollars but Ike paid that back and then he bought a horse from Mr. Childress for Ned or he went Neds security and had it to pay, that is the only two debts that he had to pay for his children.

Q. State whether he always made good crops, corn and cotton?

A. As good as anybody in the neighborhood, nobody had any better land and we worked it well.

Q. Did you ever hear of him turning the place over to Whit after the deed was made?

A. No sir he did not do it.

Q. Did you know what was going to be done when you say them out there running the line that day they were surveying the land?

A. No sir, I never heard of them having a deed until sometime afterwards.

Q. What was your fathers mental and physical condition that day?

A. It was bad, he was so weak he couldnt walk, had to be carried in a buggy, had no recollection.

Q. What was his condition that day, mentally and physically as compared with it to day?

A. About the same.

Q. How long has he been in his present condition?

A. Oh: eight or ten years, in fact every since Annie married, he hasnt been able to do anything.

Q.

CROSS EXAMINATION OF CHARLIE KOONCE BY MR. JERMAN.

Q. At the same time they run this line they run off a five acre tract which your father deeded you, didnt they?

A. Yes sir.

Q. Mr. Burnett was still directing them how to run the line when they run off your five acre tract, wasnt he?

A. I guess so.

S.H.BURNETT.

The defendant S.H.Burnett,white,being duly sworn,testified as follows.

My name is S.H.Burnett-I am one of the defendants in this case I am 54 years of age.

EXAMINATION BY MR.JERMAN.

Q. How long have you known Sol Koonce,the complainant?

A. All my life.

Q. Have you ever had any business transactions with him if so when was the first?

A. Yes sir,but I hardly know when I had the first transaction of any kind of business with him,I dont remember what it was, but the first transaction of any sonsequence was 1904 at which time he borrowed some money from me.

Q. How much money did you let him have at that ~~time~~ time?

A. It was over \$500.00 I dont recall the exact amount he got, principal and interest amounted to \$595.00.

Q. How did it happen that you let him have this money?

A. He said he needed it and asked me to lend it to him and I did.

Q. Did he or not execute a note for this money?

A. Yes sir he executed me his note for \$595.00,payable Dec.15th 1904,dated April 12th,1904.

Q. Was this note secured or not?

A. Yes sir he made a mortgage on 100 acres of land situated in the eight civil district of Crockett County,Tenn,to secure thsi note.

Q. Is this the deed of trust (handing witness a paper) ?

A. Yes sir(examining the paper),this is it is a copy certified by the register.

Q. I will ask you to file it and marked same Exhibit No.1.to your testimony?

A. I file and so mark it Exhibit No.1.

Q. What land was it Solomon Koonce conveyed in the mortgage you have just mentioned and referred to ?

A. It was the 100,acre tract he owned at that time and included the tract he later deeded to Whit Koonce and Jim Walker and also included a five acre tract he gave his son Charlie Koonce, but it was all in one tract,in one tract when he mortgaged it to me 1904.

Q. What further transactions,if any,did you have thereafter with Solomon Koonce,after you let him have this money 1904?

A. I furnished him supplies,corn,hay and some money until 1907. Which together with the \$595.00 note amounted \$1100.00,about \$1100.00.

Q. I will ask you if Solomon Koonce ever paid the \$595.00 you have been talking about or any part of it?

A. No sir,he has not. In 1907 he executed a note of \$1100.00 which covered this \$595.00 note.

Q. You say in 1907 he owed you \$1100.00?

A. Yes sir,he was not able to pay the first note when it fell due and I carried it for him and in 1907 he took up this \$595.00 by executing a new note,which covered and included what he owed me in addition to this note,the new note dated Dec.15th, 1906,payable Dec.15th,1907 and called for \$1100.00.

Q. Was this \$1100.00 note secured or not?

A. Yes sir he made a mortgage on the same tract of land,100 acres to secure this new note.

Q. What is this (handing the witness a paper)?

A. It is the last mentioned mortgage.(Certified copy)

Q. I will ask you to file this as exhibit No2. to your testimony?

A. I file and so mark it as exhibit No.2.

Q. Did Sol Koonce pay this \$1100.00 note when it fell due?

A. No sir he was unable to pay it and I carried it for him until 1912 at which time we had another settlement and he executed a new note covering this \$1100.00 note and what he owed me additional and which was unsecured.

Q. What did he owe you for in additional to the \$1100. note?

A. For supplies,corn,hay and some money furnished along-and in

1912 he executed a new note covering everything he owed me and including this \$1100.00 note. The new note was dated Nov.15th, 1912 called for payment of \$1500.00 Nov.15th,1913.

Q. Who executed this \$1500.00 note and to whom?

A. Solomon Koonce executed the \$1500.00 ^{note} to S.H.Burnett in 1912.

Q. Was that \$1500.00 not secured or not?

A. Yes sir he secured it as he had secured the other two notes by a deed of trust on the same 100 acre tract of land.

Q. What is this (handing witness a paper)?

A. The deed of trust just mentioned which Solomon Koonce Executed to secure the \$1500.00 note referred to (certified copy of it).

Q. I will ask you to file same and mark it Exhibit No.3 to your testimony?

A. I so file and mark same Exhibit No.3 to my testimony.

Q. Has the \$1500.00 been paid by Sol Koonce?

A. No sir, this \$1500.00 was not paid at maturity and Sol Koonce begged me to carry it and I did carry it until final settlement in 1920 at which time Whit Koonce and Jim Walked assumed all the incumbrance on this land and executed their notes to me, covering the indebtedness in full of Solomon Koonce.

Q. After execution of this \$1500.00 note and deed of trust what if any business transactions did you have with Solomon Koonce?

A. I let him have some things after that, supplies and some money. Not a great deal at one time, but all along, I let him have what he needed. The next transaction of any size was this; shortly after the execution of the \$1500.00 note and mortgage in 1912 Solomon Koonce came to me and said he owed O.E. Birmingham \$800.00 which Mr. Birmingham wanted, said he had to have this money and asked me to let him have it. A number of years prior to that time he had borrowed the money from Mr. Birmingham and had renewed the note from time to time it was \$656. originally in 1899--but the note at the time he got me to take it up for him was \$800. I let him have this \$800. and took up the note for him, I gave him my check for \$800.00 and he gave it to Mr.

Birmingham and Mr. Birmingham endorsed the note to me.

Q. Was this note secured in any way?

A. No sir not to me by Sol Koonce. Mr. Birmingham endorsed the note When I took it up, Mr. Birmingham made the note good.

Q. What was the next transaction that you had with Sol Koonce?

A. Well after all the above one of Sol Koonce son I ke Koonce bought the 25 acre tract of land from Ned Koonce which Sol had given Ned Koonce. In this transaction Ike Koonce got his father Sol Koonce to borrow \$600.00 of this koney from O.E. Birmingham for him which Sol Koonce did by giving Mr. Birmingham a second mortgage on this same 100 acre tract of land subject to my note of \$1500. and mortgage.

Q. What did you have to do with this transaction?

A. I had nothing to do with it at that time- at the time they closed it up, but later in 1917 Solomon Koonce came to me and said that he was unable to pay Mr. Birmingham and wanted me to take this note of \$600.00 up for him which I did.

Q. Did you let him have the \$600.00?

A. Yes sir, I did not have the \$600.00 but I borrowed it and let him have it. I got the money from Peoples Saving Bank at Jackson, Tennessee in March 1917 and borrowed it on my own note and collateral, note is herewith filed and made a part of this testimony and marked Exhibit "A".

Q. Well what was the next transaction that you had with Solomon Koonce?

A. From that time on I furnished him supplies, in fact more possibly each ^{for} ~~than before~~ ^{therefore} in the way of supplies for his own use and some corn and hay.

Q. I paid off one note of \$200.00 for him in 1919. Ned Koonce had bought a horse from Mr. Childress and gave a note calling for \$200.00 for the horse and Childress wouldn't sell the horse without Sol Koonce signed the note. When it fell due they couldn't pay it and Uncle Sol came to me and I paid it for him.

Q. Has Sol Koonce ever paid you any part of any of this indebtedness to you?

A. No sir he has not. When we had the final settlement in 1920 his indebtedness was pro rated between Jim Walker and Whit Koonce as I have stated, but Sol has never paid any of it.

Q. Why did Sol Koonce divide his land between Whit Koonce and Jim Walker in 1920, if you know?

A. Well he talked to me about it, said he was getting to old to do much work and was unable to pay me what he owed me. He asked me what I thought was the best thing for him to do about it. He said all he wanted was a living for himself and wife and he was willing to ~~make~~ do anything that would make this secure. In as much as he had given his other four children the other 100 acre tract of land I suggested to him that if he would get his other son Whit Koonce and Jim Walker his son in law neither of whom had gotten any of his other land to assume and pay his indebtedness and let him have a support out of the land that it would be a good idea for him to divide the land between them.

Q. Why did you suggest this Mr. Burnett?

A. Well I didnt want to press him on his obligations to me, I never had and never expected to as long as I could help it and I thought Jim Walker and Whit Koonce would take hold of the land and possible pay it out and Uncle Sol still have a living out of the land.

Q. Did Sol Koonce talk to you more than once about it?

A. Yes sir, he talked to me a number of times about it and finnally went up to Carroll County to see Jim Walker about it.

Q. Did you see him when he came back.?

A. Yes sir and said that arrangement suited Jim Walker and Annie and that was what he was going to do.

Q. When did Jim Walker find out what the total indebtedness of Sol Koonce was?

A. After he got down here, when the land was surveyed and the whole matter wound up.

Q. What was the indebtedness of Sol Koonce to you at that time?

A. About \$4000.00, this included the \$1500.00 note he executed to

me in 1912, they \$800.00 note I took up which he owed Birmingham and the \$600.00 note he owed Birmingham which I took up for him and all other matters of account, supplies, corn, provisions, money and some debts I had paid for him, together with interest on his indebtedness for the years it had been running, in fact some over \$4000.00. I don't know the exact amount. We made the calculations and the figures at the time and all parties thoroughly understood the matter and was satisfied.

Q. Were you present when the land was divided, the land surveyed?

A. Yes sir.

Q. Why were you there?

A. I was interested in the matter. I had a right to be there. In fact they wanted me there. I knew the exact line from which to begin as far as the survey was concerned and after the land was divided I certainly had a right to see to it that my indebtedness was properly secured.

Q. After dividing line was run, what was done?

A. We went to Maury City and Squire Jim Neal drew the deeds from Solomon Koonce and his wife to Jim Walker and Whit Koonce and then drew mortgages from Whit Koonce and Jim Walker to secure my indebtedness. After this settlement I turned over to Solomon the old notes I held against him, mortgages and papers.

Q. Were these deeds and mortgages then executed?

A. The deeds were but Jim Walker's mortgage had to go back to Carroll County for his wife to sign and acknowledge.

Q. In dividing this indebtedness of Solomon Koonce, how was it arranged.

A. Well, Jim Walker refused to pay or assume payment of this \$600. debt which Sol Koonce had incurred for Ike Koonce, in fact Jim said Ike ought to pay it and that he wouldn't pay it, that he wouldn't pay any part of it, so they finally agreed that that Whit Koonce would assume and pay it and the remainder of the indebtedness was divided equally. Then notes were drawn for the amount which Whit Koonce and Jim Walker were to assume and pay. Jim Walker executed his note for \$1973.00 and Whit

Koonce executed his note for \$2504.00 to me and maybe some odd cents on one or both, and these notes were secured by mortgage on their respective tracts of land. The mortgages were signed and acknowledged before Squire Neal a Notary Public and Jim Walker's mortgage was sent to Carroll County for his wife to sign and acknowledge, which she did.

Q. What are these (handing witness papers).

A. These are the deeds of trust which Whit Koonce executed to secure the \$2504.00 note just mentioned and the deed which the trustee in that deed of trust made to me, when the deed of trust was foreclosed.

Q. I will ask you to file and mark same Exhibit 4 and 5 to your testimony?

A. I have filed and so marked then number 4 and 5.

Q. Has this \$2504.00 note ever been paid?

A. No sir.

Q. What did you do with the note after Whit Koonce executed it to you?

A. Some little time thereafter I let the Bank of Alamo have the note. Whit Koonce paid interest on the note two years, paid this to the Bank of Alamo, he also paid the taxes on the land for one year. Finally in 1924 I had the trustee S.A. Booth foreclose this deed of trust.

Q. Why did you have the deed of trust foreclosed?

A. Well, Whit Koonce would not pay the principal, would not pay any part of it not even pay the interest nor the taxes on the land, and the land was depreciating in value, gullies washing in it and the place going to rack generally under his management.

Q. Has Jim Walker paid his note?

A. Not all of it. But he has kept up interest and taxes and paid it down to something like \$1200.00 or \$1300.00 the Bank of Alamo has the note.

Q. Have you let Sol Koonce have any money since 1920?

A. Yes sir not much, a little a long at the time as much as five dollars several times, also some corn.

Q. Has any of this been paid or repaid?

A. No sir I didnt expect it.

Q. What do you know about this written agreement between Jim Walker and Whit Koonce in which they agree to pay Solomon Koonce and Cherry Koonce \$400.00 a year for their support.

A. I never heard of it,until they came to draw up the deed at that time I think Jim Walker is the one that suggested it.I wrote it for them right there while Squire Neal was drawing these other papers.Jim Walker wanted something to shaw that Whit Koonce was to support Sol and Cherry Koonce the same as he (Jim),that is half of the time. They estimated the support to be \$400.00 a year for the two for Uncle Sol and Aun Cherry and I wrote it as they told me in substance as I far as the agreement was concerned they were to support and take care of Sol Koonce and his wife or pay them Four Hundred dollars a year I had nothing to do with it,further than to write it as they wanted it,but that is what they agreed on.

Q. After this whole matter was closed up,where did Jim Walker go from Carroll County?

A. He came down here in January 1921 and moved on his part of the land and Uncle Sol and Aunt Cherry moved into the house with them.

Q. How long did Sol Koonce live with Jim Walker and his wife?

A. Aunt Cherry lived until August 1922 and Sol Koonce stayed there with Jim Walker about seven months afterwards.

Q. Where did he then go?

A. He went to Whit Koonce and has been there since.

Q. Was you at Jim Walkers house after Sol Koonce moved there?

A. Yes sir a number of times.

Q. How was Sol Koonce and his wife Cherry treated?

A. As far as I could see or know they were well treated,seemed to have plenty and apparently well cared for.

Q. Is the description contained in the deed of Solomon Koonce to Whit Koonce correct?

A. No it is not exactly.

Q. I will ask you to, give a correct description of the land which Sol Koonce conveyed to Whit Koonce, stating the Civil District of the County and the calls of the tract?

A. The land lies in the Eight Civil District of Crockett County, Tennessee, it is a part of the 250 acres that Isaac Koonce conveyed to complainant Sol Koonce. This 47 acres deeded to Whit Koonce is the eastern half of about ninety five acres left of the 250 acres after Sol Koonce had conveyed the balance of the 250 acre tract to his other children. The correct description is as follows, beginning at the N.E. corner of Jim Walker's land Elm and Sweet Gum pointers, runs thence East $33\frac{1}{2}$ poles to Cleek's West boundary line line; thence South with J.H. Cleek's and S.H. Burnett's West boundary line, 216 poles to A.P. Moore's N.E. Corner; thence West with A.P. Moore's North boundary line $35\frac{1}{2}$ rods to Jim Walker's South East corner; thence North 216 rods to the beginning, containing $46\frac{7}{8}$ acres.

Q. Where is the error in the deed of conveyance from Sol. Koonce to Whit Koonce?

A. The second call in the deed from Sol to Whit Koonce "is thence North with the West boundary of Cleek and Burnett", when in the correct description this call is "South".

Q. State whether or not the tract of land owned by Cleek, Burnett and Moore, and the corners called for in the deed, executed by by Sol to Whit Koonce were well known and familiar ~~with the~~ to the parties to this conveyance?

A. Yes sir not only to the parties but the citizens generally in that community.

Q. Would there be any difficulty in locating this tract of $46\frac{7}{8}$ acres of land deeded ^{ed} by Sol to Whit Koonce by a person familiar with the adjoining lands, from the description in that deed executed by Sol to Whit Koonce.

A. Absolutely none. Any person who knew the location of the A.P. Moore land, the Cleek land the Jim Walker and the Charlie Koonce land would have no difficulty in identifying this $46\frac{7}{8}$ acre tract.

CROSS EXAMINATION OF THE DEFENDANT S.H.BURNETT BY THE
COMPLAINANT.

Q.1. Who wrote the article of agreement that Jim Walker and Whit Koonce signed the day the deeds were made to them to the land in controversy?

A. I did at Jim Walkers suggestion.

Q. You were always a close friend to complainant?

A. Yes I went to see him often and set on the side of the bed and talk to him. I looked on him as a father.

Q. He had great confidence in you, didnt he?

A. Yes sir.

Q. What interest did you make him pay you?

A. Just eight per cent like the banks make me pay.

Q. Did you calculate and put in eight per cent in the \$1500. note? note that he gave you on the last settlement 1912?

A. Yes sir.

Q. When was that note due?

A. The 15th of November 1913.

Q. How long had that note been past due when the deeds were made to Jim Walker and Whit Koonce?

A. Six years and seven months.

Q. (By the Court) Wasnt that note barred by the Statutes of Limitation when these deeds were made?

A. Yes sir.

Q. (By Solicitors of Complainant) What did he owe you the \$1500.00 for?

A. Borrowed money, corn, hay, wheat and provisions that I furnished him.

Q. Have you any book or memorandum that was made at the time you furnished him?

A. No.

Q. How much corn did you furnish him?

A. I dont know.

Q. How much hay did you furnish him?

A. I dont remember.

Q. How much flour did you furnish him?

A. Oh: I cant tell now.

Q. How much provksions did you furnish him?

A. I cant tell you, but I furnished it.

Q. Cant you tell how much you furnished him each year?

A. No.

Q. What year did you furnish him?

A. Well I cant tell that.

Q. You can give the amount of corn, hay, flour, meat or provisions you furnished the complainant in one year, cant you?

A. No.

Q. You cant tell the amount of money you let him have any year, can you?

A. No sir. I just let him have money when he wanted it.

Q. Did any person ever see you let him have any money?

A. Not that I know of.

Q. Did you take his note for it?

A. Sometimes I would and sometimes I would not.

Q. How many notes did you ever take from him in all your business transactions?

A. I cant tell you, I can tell you this if he come to me for money and I did not have it I would go and borrow it and let him have it?

Q. How many times did you do this?

A. I dont know.

Q. Did you have anybody to witness a note for you?

A. Yes one, S.D.Booth.

Q. The defendant S.A.Booth is your sousin and close friend is he not?

A. Yes cousin by marriage.

Q. You have had the defendant Jim Walker living in your yard for the last two years have you not?

A. Yes.

Q. Cox the surveyor eat dinner at your house the day he surveyed the land didnt he and come to your house that mornning?

A. Yes.

Q. You had at the time the deeds were made to Jim and Whit your land mortgaged for about \$3400.00?

A. Yes.

Q. How much did you owe the Citizens Bank at Maury City the 1st of December 1913?

A. I dont know.

Q. Did^{nt}/you owe that bank at that date and have a note of complainant as collateral security in that bank?

A. I dont know

Q. What did you do with the notes that you took from Jim Walker and Whit Koonce that you claim cover the indebtedness that complainant owed you?

A. I let the Bank of Alamo have them, I owed the Bank about \$4000.00.

Q. Are the statements in your answer to complainants bill as to his mental and physical condition true?

A. Absolutely true.

Q. How close do you live to complainant.

A. A short distance.

Know all men by these presents,. That we, Solomon. Koonce and Cherry Koonce,. Both of crockett county, Tenn,. for and in consideration of, Five Dollars to us in hand paid, by J.T Burnett, the receipt whereof, is Hereby acknowledged,. and the other consideration hereinafter mentioned,. have, sold ,Transferred, conveyed, and by these oresents do sell , transfer and convey one tract lf land, to wit,. Commencing, south west corner of said Tract runs, thence, East to S.H.Burnett, thence, North to Charly Koonce, Tract ; thence, west to Tom Poston,.Tract; of land, thence south, to the beginning,. containing, one Hundred, acres of land,. more or less,.

To have and to hold said tract of land, to the said, J.T Burnett , his heirs & assigns, forever,. and I Warrant said title, to be good and unincumbered, in any way and will defend the title to the same against the claims, of all persons Whomsoever

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EU^t this sale and is made for the following purposes and none other, that is to say I am indebted, to S.H.Burnett;. ~~for~~

for borrowed, monet,. to the amount of Five Hundred, and Ninety five, Dollars;. By note bearing even date with this instrument and due and payable, Dec, 15th,. 1904,. Now if I pay said note when it becomes, due or cause the same to be done, then this sale and transfer conveyance is to become null and void, otherwise to remain in full force and effect, and should,. I not pay same, then I authorize the said J.T Burnett as trustee, to advertise said land,. by written notices,. and stuck up the same at Cairo Tenn, and Maury city Tenn,. Giving 10 days notice,. and when sold First pay all neccessary expenses ; 2nd said note of Five Huñdred, and ninety five, Dollars,. (\$595.00 and any Int. that may accrue ,I Vhery Koonce,. wife of Solomon Koonce,. do Join my Husband in this conveyance,. hereby relinquishing, my Homestead and dower, rights to said land, as above conveyed,. this April, 12th. 1904.

his
Solomon. /Koonce,
mark

her
Chery. / Koonce,
mark

STATE OF TENNESSEE.

CROCKETT COUNTY: Personally appeared before me, J.M.Neal;
a notary Public, in and for said county ;

Solomon. Koonce,, the bargainer, with whom I am personally
acquainted, and acknowledged, the execution of the within deed for
the purposes therein contained;
also appeared before me J.M.Neal,, a notary public, Cherry Koonce
wife of Solomon, Koonce,, and being examined privately and a part
from her husband, and the said Solomon, Koonce, acknowledged
the execution of the within deed to have been done by her
freely volentarily and understandingly, Without compulsion or
constraint from her Husband and the said Solomon Koonce, and for
the purposes therein expressed;.

This April, 12th, 1904.

J.M.NEAL. notary Public;

Seal;

I certify that the foregoing, Deed of Trust with certificatr
of acknowledgment was received for regitration April, the 13th.
1904, at ; O'CLOCK. P.M. and so noted in Minute BOOK, No.2. page
356-357.

E. C. Pearson

Register

I F. J. Evans. Register of crockett county, certify this a copr of
the instrument Recorded in Deed, BOOK? "S" at page, 34. of
Records, at Alamo, Tenn,.

This Nov, 28th, 1925.

F. J. Evans
County Register

STATE OF TENNESSEE

CHOCOMET COUNTY: Personally appeared before me, J.W. Neal; a Notary Public, in and for said county;

Solomon, Koonce, the bargainer, with whom I am personally

acquainted, and acknowledged the execution of the within deed for

the purpose therein contained;

who appeared before me J.W. Neal, a Notary Public, Charles Koonce

and being examined privately and a part

from her husband and the said Solomon Koonce acknowledged

the execution of the within deed to have been done by her

freely voluntarily and understandingly

and for the purpose therein expressed:

This April 12th, 1904.

J.W. NEAL, Notary Public:

Handwritten: To defraud of J.W. Neal

Copy 1

Handwritten: Charles Koonce

Handwritten: J.W. Neal

Handwritten: Charles Koonce

Handwritten: 1904

Handwritten: 8/12/04

I certify that the foregoing, Deed of Trust with certificate of acknowledgment was received for registration April, the 12th, 1904, at 9:00 A.M. and so noted in Minute Book, No. 2, page 356-357.

J.W. Neal, Notary Public.

Register

I E. J. Evans, Register of Chocomet county, certify this a copy of the instrument Recorded in Deed, BOOK 2 " 2 " at page, 34. of Records, at Adams, Tenn.

This Nov, 28th, 1905.

Handwritten signature: E. J. Evans
County Register

Know all men by these presents. that we, Solomon Koonce, & wife Chery Koonce,. of crockett county, , for and in consideration of Two (#2.) Dollars cash in hand paid, the receipt of which is hereby acknowledged, and other considerations hereinafter mentioned have this day bargained and sold, and do by these presents , bargain, sell, alien and convey unto, J .T.Burnett, heirs and assigns forever, all our right, title and interest in and to a certain Tract of Tract of land and bounded as follows to witt;

Comenøing South West Corner of said tract, runs thence East to S.H.Burnett's ~~####~~ Thence, North to Cherry Koonce Tract, thence West to TOM Poston's Tract of land; thence south to the beginning containing loo One Hundred Acres, more or less;.

To have and to hold the said land with all improvements, tenements, hereditaments, rights , privileges, and appurtenances thereunto belonging, to the said J.T Burnett, heirs and assigns forever,. we covenant with the said J.T Burnett, that we are lawfully seized of said tract of land, have a good right to convey same , and that it is unincumbered; we further covenant with the said J.T Burnett that we will forever warrant and defend the title to said tract of land, to the said, J.T Burnett , heirs and assigns, against the lawful claims and demands of all persons whomsöever;

But this sale and conveyance is made and executed for the following purposes ,uses and trusts and none ither to wit;

we are indebted, to S.H.Burnett by note in the sum of Eleven Hundred, Dollars and desire to make certain ~~####~~ by the execution of this mortgage the payment thereof. Now therefore if we Shall pay or cause, to be paid to the said J.T Burnett, the aforesaid, Indebtedness, and the costs of making and executing, this Trust By or before. the 15th. day of Dec, 1907, then this conveyance shall be void, and of no further force, and effect; held;

But if we shall fail to pay or cause to be paid, to the said S.H.Burnett;. the aforesaid debt and all ~~####~~ accrued interest, and the cost of this trust as aforesaid,. by or before the 15th day

of Dec., 1907. then our said Trustee, and mortgagee J.T. Burnett without taking any oath or executing any bond, may take immediate possession of the property herein conveyed, and proceed to sell the same at Public auction in front of the East Door of the Court House in, ALAMO. Tennessee, to the Highest and best bidder there for cash after having first advertised by printed hand bills, only the time terms and place of the said sale, and he shall apply the proceeds of said sale when so made to the payment, First of the costs of making and executing this mortgage, and the payment also of the aforesaid indebtedness, and any accrued interest thereon, and the remainder if any to me ~~be~~ our order.

in case any sale is made under the terms and provisions of this mortgage. We hereby waive and relinquish all right of redemption and Homestead, dower and that title of this purchaser may be absolute.

In witness whereof We hereunto subscribe our names, on this the 17th. day of Dec, 1906

his
SOLAMON/ KOONCE
mark
her
CHERRY/KOONCE
mark

Attest J .M. Neal.

Ned. Koonce;

STATE OF TENNESSEE:

CROCKETT COUNTY? Personally appeared before me, J.M. Neal. a Notary public, of said county,. the within named, Solomond. Koonce, the bargainor,. with whom I am personally acquainted and acknowledged that he executed, the within Deed, instrument for the purposes therein contained,. and Cherry Koonce, wife of the said Solomon. Koonce,. having personally appeared before me privatell and apart from her husband, the said Chery Koonce,. acknowledged, the execution of the said Deed to have been done by her, freely, volentarilly and understandingly, without compulsion or constraint from her said Husband, and for the purposes therein expressed at Office,. this 17. day of Jan, 1907

SEAL;

J.M. Neal., Notary Public.

I certify that the above Deed of trust was received, for record Jan, 19. 1907. at 9.20 Oclock. A.M. and noted, in Minute, Book

Alamo, Tenn, Nov, 28th. 1925

I.F.J.Evans. Register of crockett county, certify this a copy
of Instrument recorded, in the Register's office, at Alamo, Tenn.
in Trust Deed Record, "U" At page, 761.

Executed by Solomon Koonce and Chery Koonce, to J.T.Burnett Trustee,

I.F.J. Evans
county register

Copy

Solomon House

Pa. Tenn

J. J. Burnett

Ex. No. 2. &

Sept 1925

J. J. Burnett

Filed Dec 1925

County Register

\$1.25

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No. 2. page 523-523

T.O. Pearson. Register

Alamo, Tenn, Nov, 28th. 1925

I, T. J. Evans, Register of Crockett County, certify this a copy of instrument recorded in the Register's office, at Alamo, Tenn.

Witness my hand and the Seal of said County, this 1st day of December, 1925.

FOR AND IN CONSIDERATION of One Dollar in hand paid, the receipt of which is acknowledged, and the other considerations hereinafter mentioned, *That we Solomon*

Koonce and wife Cherry Koonce of
Brockett County have this day bargained and sold, and do hereby transfer and convey, to *S.A. Booth* and his successors in trust, certain

property in the State of Tennessee, *Brockett* County, *8th Civil Dist* described as follows, to-wit: *A certain of land bounded*
as follows to-wit:

Commencing South West Corner of
Said Tract, Runs thence East to
A.H. Burnetts tract, Thence North to
Charlie Koonce tract, Thence West
to Tom Poston tract, Thence South
to the beginning, Containing (100 acres)
One hundred acres more or less,

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To HAVE AND TO HOLD said property to the said *S.A. Booth*
Trustee, and his successors in trust, forever. *We* covenant that *we are* lawfully seized of
said property, have a good right to convey it, and that the same is unincumbered, and *we* will
warrant and defend the title to said property to the said *S.A. Booth*,
or his successor in trust, and his assigns, forever, against the lawful claims of all persons.

But this conveyance is made **IN TRUST** for the following uses and trusts, and for no other purpose,
to-wit: The said *Solomon Koonce wife Cherry Koonce* is justly indebted to
A.H. Burnetts by note in the sum of \$ *1500⁰⁰* due as follows:

Fifteen Hundred Dollars due
Nov 15, 1913.

Note bearing even date
herewith.

Now, if *Solomon Koonce wife* shall pay the sum... aforesaid when due,
according to the terms of said note..., then this instrument is to be of no further force or effect. But
if *they* fail to pay the said sum... of money when due as aforesaid, or any part of said sum..., ac-
cording to the terms above expressed, then, upon such default, this conveyance remains in full force
and effect, and the said Trustee, or his successor in trust, is hereby authorized and empowered, after
advertising as required by law, to sell said property at the Court house door in said County, to the
highest bidder, for cash, and free from the equity of redemption, homestead, dower, and all other ex-
emptions of every kind, which are hereby expressly waived, and the said Trustee, or his successor in
trust, is authorized to make a deed to the purchaser. The creditor may bid at any sale under this
conveyance. *We* agree that the Trustee may, at any time after default in payment of principal
or interest as each falls due respectively, enter and take possession of said property, and shall only
account for net rents received by him.

And... agree to keep all the buildings on said property insured in some reliable fire insur-
ance company or companies for the sum of \$... until the sum herein secured is fully
paid, and to have the loss made payable on the policy to said Trustee for the benefit of the owners and

holders of the debt herein secured. we agree to keep the improvements on said property in good repair and preservation and to pay all taxes and assessments, and to pay them when due; and in case we fail to do either, then said Trustee, or the creditor herein secured, may do either, and charge and treat the amount so expended as a part of the debt herein secured.

In case of sale under this Deed of Trust, the proceeds will be applied by the Trustee:

First—To pay all the costs and charges of executing this trust, including attorney's fees and the expense of any litigation which may arise on account of the execution and enforcement of this trust.

Second—To pay said debt, or any balance thereof then remaining unpaid.

Third—The residue to be paid to Solomon Roonee Cherry or order. And in case of the death, absence, inability, or refusal to act of the said Trustee at any time when action under the foregoing powers and trusts may be required, the owner of the debt herein secured is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to A. Book shall be vested in said successor.

In the event of a sale of said property under and by virtue of this trust, then the said parties of the first part, and all persons holding under parties of first part shall be and become the tenants at will of the purchaser of the same, from and after the execution and delivery of a deed to such purchaser, said tenancy to be determined at the option of said purchaser upon five days written notice.

This 15 day of Nov, 1912

Solomon Roonee

Cherry Roonee

DEED OF TRUST.

FROM

Solomon Roonee
Cherry Roonee
TO
A. Book

Filed for record this..... day of

....., A. D. 191.....

at..... o'clock..... minutes..... M.

Register.

Fees, \$ 1.50

ALL FORMS OF LEGAL BLANKS
FOR SALE BY
MCCOWAT-MERCER PRINTING CO.
JACKSON, TENN.

STATE OF TENNESSEE, CROCKETT COUNTY.

I, G. L. BENNETT, Register of said County, do hereby certify that the foregoing.....

Trust with certificate of acknowledgment, was this day filed in my office for registration, at..... o'clock..... A. M., and noted in Minute Book No. 3, Page 3184356

and the same was duly registered in my office in..... Trust Book BB

Page 547 & 548

Witness my hand, at office, the 15 day of Nov, 1912

G. L. Bennett

Register.

Dep. Register.

The State of Tennessee, }

County of

Crockett }

Personally appeared before me, C. F. Booth
a Notary Public in and for said State and County, duly com-
missioned, sworn and acting, the bargainers in the foregoing
and attached deed, Trust Solomon Boone and his wife
Cherry Boone, with both of whom I am personally
acquainted, who severally acknowledged that they executed
the said deed for the purposes therein contained.

And Cherry Boone, wife of the said
Solomon Boone, having appeared before me
privately and apart from her husband, she, the said Cherry
Boone, acknowledged the execution of said deed
to have been done by her, freely, voluntarily and understand-
ingly, without compulsion or constraint from her said husband
and for the purposes therein expressed.

In Witness Whereof, I have hereunto set my
hand and official seal, at office, in said State
and County, this the 18th day of

November 19/2

C. F. Booth
Notary Public.

\$600⁰⁰/₁₀₀

Jackson, Tenn., March 22 1917

on demand

after date I promise to pay to the order of

PEOPLES SAVINGS BANK OF JACKSON

Six hundred

Dollars.

at the banking house of said Bank in Jackson, Tennessee, for value received, having deposited with said Bank as collateral security for the payment of this note, and of any other note, claim or indebtedness now or hereafter held against us, or either of us by said Bank.

note on Ned Moore and Serena Moore for 600⁰⁰/₁₀₀
secured by Trust deed.

which we hereby authorize said Bank to sell, without notice, either at public or private sale, on the non-performance of this promise, applying the net proceeds, thereof to the payment of this note, with interest, and any excess after the payment hereof to the payment of any other note, claim or indebtedness then held against us, or either of us as principal, surety or endorser by said Bank, whether due or not due, as said Bank may elect, and accounting to us for the surplus, if any. Should the net proceeds of said collateral be insufficient to discharge this note, with interest, we promise to pay said Bank the amount of such deficiency, with interest thereon, forthwith after said sale. In case of any exchange or addition to said collateral, we agree that the above agreements and provisions shall extend to such new or additional collateral. If this note is placed in the hands of an attorney at law for collection, we agree to pay 10 per cent attorney's fees and all expenses incurred in its collection, and that if it is sued on, said attorney's fees and expenses shall be taxed up in the judgement. In case of aforesaid public or private sale, said Bank is authorized to buy said collateral as any other person.

No. 35978

Due On Demand

H. P. Currier

MC COWAT-MERCER, JACKSON, TENN. 45182

Exhibit A
to testimony of
S. H. Burnett

KNOW ALL MEN BY THESE PRESENTS; That we. WHITE KOONCE AND WIFE
MABLE KOONCE,. of crockett co. Tenn;. For and in consideration of;
one Dollar, cash to us in hand paid, the receipt of which is hereby
acknowledged, and other considerations hereinafter mentioned,
Have this day , bargained and sold, and do by these presents, bargain
,sell Alien and convey , unto S.A BOOTH, Trustee, of crockett county,
Heirs and assigns forever;.

All our right title and interests, in and to ~~the~~ a certain Tract
of land, and bounded as follows to wit;

Beginning at Jim Walker's N.E Corner, with Elm & Sweet Gun Pointers,
Runs east $33\frac{1}{2}$ Rods to J.H. Cleek's, west boundary line; thence North
with J.H. Cleek's & S.H. Burnett's, west boundary line, 216 rods to
A.P. Moore's N.E Corner;. thence west with A.P. Moore's. North bound-
ary line,. $35\frac{1}{2}$ rods, to JIM Walker's S.E Corner;. on A.P. Moore's
North boundary line;. thence North 216 Rods to beginning containing
46-7/8 acres / more or less;.

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TO HAVE AND TO HOLD the said tract of land, with all improvements,
tenements. hereditaments, rights privelages and appurtenances,
thereunto belonging,. to the said WHIT Koonce,. Heirs assigns fore-
ver;.

We. covenant with the said S.A Booth. Trustee, that we are lawfully
seized of said tract of land, have a good right to convey same;
and that it is unincumbered, we further covenant with the said
S.A BOOTH,. Trustee, that we will forever warrant and defend the
title to said Tract of land. to the said S.A Booth,. Trustee,
heirs and assigns , against the lawful claims and demands, of
all persons, whomsoever;.

THIS BEING THE SAME property purchased by me of SOLOMON KOONCE
on 28th, day of April, 1920; Deed found of recored, in Deed Book,
No..... page.....

But this sale and transfer is made and executed, for the follo-
wing, uses and trastes and for none other, to wit;.

we are indebted. to S.H. Burnett, in the sum of Twenty Five Hundred

& four and 90/100 Dollars,. and desire to make certain the (by the execution of the mortgage the payment thereof,.

Now Therefore , if we shall pay or cause to be paid, to the said S.H BURNETT, the aforesaid, indebtedness and the cost of making and executing this trust; by or before the 15th day of Nov, 1920. then this conveyance shall be void and of no further force and effect;. held;

BUT if we shall fail to pay or cause to be paid the said S.H.Burnett. the aforesaid, Debt. and all ~~####~~ accrued, interest and the cost of this trust as aforesaid, by or before the 15th, day of Nov, 1920 then the said TRUSTEE and Mortgagee, S.A BOOTH,. (Without taking oath or executing bond may take immediate possession of the property herein conveyed,. and proceed to sell the same at Public auction, for cash, after advertising by written or printed hand bills, the time, terms, and place of the said sale and he shall apply the proceeds of said sale, when so made to the payment ;

First of the cost of making and executing this Mortgage; and the payment also of the aforesaid, indebtedness, and any accrued, interest thereon; and the remainder , if any, to me or order;

135 In case. any sale is made under the terms of and provisions of this mortgage We hereby waive and relinquish all right of redemption and homestead, dower, and that title to the purchaser may be absolute;

IN TESTIMONY WHEREOF. we hereunto subscribe our names on this 28th. day of April, 1920;

WHIT.KOONCE.

MABLE . KOONCE;

STATE OF TENNESSEE)

CROCKETT COUNTY?.) Personally appeared before me, J.M.NEAL. notary Public, of said county;. the within named WHIT KOONCE AND MABLE KOONCE?. the bargainors with whom I am personally acquainted, and who acknowledged,. They they executed the attached instrument for the purposes therein contained, and MABLE KOONCE wife of said WHIT KOONCE,. having personally appeared before me privately and apart from her husband, the said Mable Koonce, acknowledged, the execution of

said instrument to have been done. by her freely, voluntarily
and understandingly; without compulsion or constraint from her
husband and for the purposes therein expressed;.

Witness my hand and notarial seal, at Office in Maury City, Tenn
this 28th, day of April, 1924;

SEAL:)

J. M. NEAL. notary Public

I Certify filed 4/29./1924. at 5 P.M. notd MIN. BOOK. 4. page
340-341;

F. J. EVANS. REGISTER

I, F. J. EVANS. REGISTER OF CROCKETT COUNTY, TENN CERTIFY THIS A TRUE
COPY of the Instrument recorded, in Register's office. at Alamo, in
Deed of Trust Record, . Book. H.H. at page, . 401.-402.

F. J. Evans
COUNTY REGISTER

14 SEP 1964 10 14 00 14 00 14 00

J. M. H. L. Notary Public

[illegible]

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ESTIMATES MAY 1, 1971

Use of Trust Record.. Book. H.H. at page.. 401-402.

SEP 10 1966

0512-1

JIM WALKER.

The next witness for Defendant Jim Walker, colored, after being duly sworn testified as follows:

My name is Jim Walker--am one of the defendants--am 65 years of age--son in law of Sol Koonce, the complainant.

Q. Where were you living in April 1920?

A. At McKenzie, Tennessee.

Q. Did your father in law Sol Koonce and his wife Cherry visit you and your wife, at McKenzie shortly before this land was divided between you and Whit Koonce?

A. Yes sir, they came and stayed with us something over a month.

Q. Did Sol Koonce say anything to you about the proposed division at that time--during his visit?

A. Yes sir--that was mainly his talk. He talked about it a good deal--he wanted us to move back down here, so he could live with us. Said he had given his other children the other 100 acres and said if we would pay his indebtedness to Mr. Burnett, he would divide the land between me and Whit Koonce.

Q. When did you next hear anything about the matter?

A. Well after they came home, we got a letter saying for me to come down here to attend to some important business.

Q. Who wrote the letter?

A. Ike Koonce.

Q. Did you come?

A. Yes sir, I came right on--got here on Wednesday and the land was run out next day and the deeds made.

Q. When did you first find out what Sol Koonce's indebtedness was to Mr. Burnett?

A. After I got down here, I found out it was something like \$4000. --but in the division of this, there was \$600. which Ike Koonce had got old man Sol to borrow for him--was really Ike Koonce debt but his father got the money for him, which I would not agree to pay nor any part of it. So they finally agreed that Whit Koonce would assume this \$600. in his part and that is the way the thing was arranged.

Q. Were you present when the line was run between the land you got and Whits part?

A. Yes sir, I was there.

Q. Who else was there?

A. Well, Uncle Sol was there--and Burnett and the surveyor, Mr. Cox--and Whit and Ike and Charlie Koonce and I beleive A.P. Moore came out there.

Q. After the land was divided what was done?

A. We went to Maury City and had the deeds and mortgages drawed up.

Q. Who drew the deeds and mortgages?

A. Squire Neal.

Q. What was the amount of your note and what was Whit Koonce's to Mr. Burnett?

A. Mine was \$1973. and Whits \$2504.

Q. How was those notes secured?

A. Me and my wife made a mortgage on the land which Sol Koonce had deed to us to secure payment of our note and Whit Koonce made a mortgage on his land to secure his note.

Q. Have you paid anything on your note, Jim?

A. Yes sir, I have kept the interest paid and cut the principal down to about \$1200. I paid this to the Bank of Alamo, they hold the note.

Q. What was this note given for Jim?

A. It was the part of Sol Koonce indebtedness to Mr. Burnett which I agreed to pay.

Q. What was the \$2504. note, given for, executed by Whit Koonce to Mr. Burnett?

A. That was the part of Sol Koonce indebtedness, which Whit Koonce agreed to pay. Both of these notes had the interest added in them when we made them, for the time they were to run.

Q. When did you take possession of the land and move on the place?

A. We came in January, 1921, as soon as we could gather our crop at the place where we were living and came on down here.

Q. What was the ~~agreement~~ agreement which you and Whit Koonce signed, as to payment of \$400. a year, to Sol Koonce and his wife Cherry

Koonce for their support?

A. Well the understanding was that we were to live ~~on~~ this land and support them, and to fix it sure we were to pay them \$400. a year, if we didnt support them, and I wanted something to show that Whit Koonce was bound equal with me. I am the one that named this agreement and Mr. Burnett wrote it up there while Mr. Neal was drawing the deeds. Sol Koonce didnt have it done.

Q. How long did Sol Koonce and his wife Cherry live with you after you moved down here?

A. Aunt Cherry lived until Aug. 8th, 1922 and Uncle Sol stayed 7 months longer and then went to Whit Koonces, and has been there since.

Q. Did they pay board while at your house?

A. No sir.

Q. Did you and your wife wait on them and take good care of them and provide for them?

A. Yes sir-- I dont think Aunt Cherry ever set her foot on the ground but one time after she moved to our house, before she died and she was as helpless as a little baby and had to be waited on just like one.

Q. Who bought their clothing and provided for and supported them while they were with you?

A. I did--bought whatever they wanted--they didnt want for nothing.

Q. Have you a list of what you bought for them while they were with you, if so read it?

A. Yes sir, (reading from small book)

Jan. 10th, 1921,	-----clothing-----	\$ 8.40
Jan. ____ 1921,	-----Doctors bill,-----	15.00
Jan. 20th, 1921,	-----Suit Clothes,-----	15.00
" " "	,-----Overcoat,-----	15.00
" " "	,-----Shoes,-----	5.00
Dec. 15th, 1921,	-----Suit. clothes,-----	12.50
Dec. ____ 1922,	-----Doctors Bill,-----	20.00
May 8th, 1922,	-----Pair pants,-----	2.00

May 10th,	----- --Domestic,-----	\$ 3.10
May, _____, 1922,	-----Doctors Bill,-----	6.00
June 15th,	-----Cash,-----	20. 00
August 8th,	-----Burial exoense,----	40. 60, (Whit
Koonce has paid half of burial expense lacking about \$6.00)		
Nov. 22nd, 1922,	-----Cash,-----	5. 00
Dec. 22nd, p	-----Doctors bill,-----	15. 00

NO CROSS EXAMINATION OF THIS WITNESS JIM WALKER BY COMPLAINANT.)

ANNIE WALKER.

The next witness for the defendants was Annie Walker, who being duly sworn deposed as follows:

My name is Annie Walker-- I am _____ years of age-- am the wife of Jim Walker one of the defendants in this suit--I am a daughter of Solomon Koonce, the complainant.

Q. Where were you living in April, 1920?

A. At McKenzie, Tennessee.

Q. Do you recall the time your father Sol Koonce divided this tract of land between your brother Whit Koonce and your husband Jim Walker?

A. Yes sir.

Q. Where were you at that time?

A. I was home--up at McKenzie at the time he did the dividing of the land.

Q. Had your father Sol Koonce and your mother visited you at McKenzie before the division of the land?

A. Yes sir they were up there to see us--stayed something like 6 weeks with us.

Q. What if anything, did your father Solomon Koonce say about the matter of dividing this land while he was up there?

A. Well he said they were getting too old to look after the place and wanted us to come down here--and said they would divide the land, if Jim (Jim Walker) and Whit (Whit Koonce) would pay what he owed Mr. Burnett. Said all they wanted was a living out of the land and would be willing to divide it, if we would pay off his indebtedness to Mr. Burnett and support him out of the land.

Q. Did he talk little or much about it?

A. Yes sir, he talked about it a right smart. He had given the other children 100 acres of land and he wanted us to move to the place which he was going to deed to Jim.

Q. After your father and mother came back home, when did you next hear anything about the matter?

A. Well after they came home--some little time--we got a letter saying for Jim to come down here to tend to some important business--the letter was written by Ike Koonce.

Q. What did Jim do?

A. He came right on down here.

Q. After the land was divided did you and Jim Walker execute a mortgage on the land which Sol Koonce had conveyed Jim, to secure a note of \$1973.95, which Jim had executed to Mr. S. H. Burnett?

A. Yes sir, that was our part of the indebtedness.

Q. When did you move here from McKenzie, after the division of the land?

A. We moved in January 1921, on our part of the land and my father and mother moved into our house at once.

Q. Where were they living at the time the land was divided and at the time you moved down here?

A. They were living with Whit Koonce on the part of the land he got in the division.

Q. How long did your mother and father live with you and Jim?

A. My mother lived with us until her death on Aug. 8th, 1922, and pa stayed 7 months longer and then went to Whit's.

Q. From the time your mother moved to your house, what was her physical condition?

A. She was almost helpless when she came there and got perfectly helpless and I had to wait on her like she was a baby.

Q. Have you and Jim any children?

A. No sir.

Q. Did you take good care of your mother and father and treat them well while they were with you?

A. Yes sir, indeed we did, they never wanted for anything.

Q. Did they pay any board?

A. No sir.

NO CROSS EXAMINATION OF THIS WITNESS ANNIE WALKER BY COMPLAINANT.

O.G.BIRMINGHAM.

The next witness for the defendant^s, was O.G.Birmingham, white, who being duly sworn testified as follows:

My name is O.G.Birmingham, I am 58 years of age, acquainted with all the parties to this suit, lived there by them and own a farm adjoining.

Q. Did you ever lend Sol Koonce the complainant in this case any money, if so when?

A. Yes, I have let him have money, could not tell when I first let him have money.

Q. Did you let him have any in 1900 or about that time, if so how was you secured, if at all?

A. Yes, he got something like \$600. from me and executed his note for \$636.00 payable in 1900, secured by a deed of trust on 100 acres of land.

Q. What land was that Mr.Birmingham?

A. It is the same land that Sol Koonce divided between Whit Koonce and Jim Walker. I also let him have about \$275.00 on 55 acres of land about the same time or maybe a little earlier.

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Q. Has this money ever been paid back to you, this note ever been paid?

A. Yes sir, I carried it along in one form and another for a number of years and finally after extending and renewing it for quite a while it was paid off by Mr.Burnett. At that time it had run up

Q. to \$800.00 and I endorsed it to him.

Q. Did you ever let Sol Koonce have any other money?

A. Yes sir. I dont remember the exact date, but one of Sol Koonce boys, Ike Koonce bought a piece of land from his brother Ned Koonce and they got the money from me to pay for it. In this transaction Sol Koonce stood for \$600.00 for Ike Koonce. Sol Koonce gave me his note for ~~\$~~600.00 and secured it by a mortgage on his land?

Q. Has that not veen paid, if so by whom?

A. That note was also paid by Mr.Burnett and I endorsed it to him.

Q. Have you ever let Whit Koonce have any money if so when?

A. Yes I let him have \$400.00 that was about three years ago.

Q. Do you know what he wanted with that money?

A. Yes sir he paid it to the bank of Alamo for interest for two years on the \$2504.00 note he executed to Mr. Burnett in 1920 at the time the division was made by Sol Koonce of the land.

Q. Did Whit Koonce ever talk to you about the \$2504. note if so what did he say?

A. Yes sir he tried to borrow the money from me to pay it, wanted me to take it up.

Q. Is that the \$2504. note which he executed a deed of trust on the land he got in the division?

A. Yes sir.

NO CROSS EXAMINATION OF THIS WITNESS O.B. BIRMINGHAM BY COMPLAINANT.

For and in consideration of one dollar in hand paid. the receipt of which is acknowledged and the other consideration hereinafter mentioned,.mentioned, we. Solomon. Koonce and wife, Cherry Koonce have this day bargained and sold, and do hereby transfer and convey to S.H.Burnett,. Trustee, and his successors in trust certain property in the state of Tennessee;. crockett county,. 8th, civil District , described, as follows, to wit;

Beginning. at S.W Corner runs East to S.H.Burnett's W.B.line; thence North to Charley Koonce, S.B.Line;.thence West to W.T. Postons line;. thence south to the beginning,. containing, 100 acres more or less;.

To have and to hold said property to the said S.H.Burnett, Trustee and his successors in trust forever,. We covenant that we are lawfully seized of said property, have a good right to convey it, and that the same is unincumbered, except,. \$1500.00. to S.H.Burnett. Due Nov, 15th, 1913,. and we will warrant and defend the title to said property to the said, S.H.Burnett,. Trustee, or his successors,. in trust and his assigns forever, against the lawful claims of all persons

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BUT this conveyance is made in trust for the following uses and trusts and for no other purpose to wit ;

the said Solomon. Koonce,. is justly indebted to O.G.Birmingham, in the sum of _\$600.00. Due as follows,. by one promissory note of even date herewith, and due the 15th, day of November, 1913 Now if Solomon Koonce,. shall pay the sum aforesaid,. when due according to the terms of said note, then this instrument is to be of no further force or effect,. BUT if he fails to pay the said sum of money, when due as aforesaid,. or any part of said sum according to the terms above expressed,. then upon such default this conveyance remains, in full force and effect, and the said, Trustee or his successors in Trust, is hereby

Authorized,. and empowered, to after advertising,. as required by law, to sell the property, at the Court House, Door in said county to the highest bidder for cash, and free from the equity of redemption , Homestead, and dower,. and all other exemptions of every Kind,.which are hereby expressly waived,. and the said, Trustee or his successors in trust, is authorized, to make a deed, to the purchaser,. the Creditor may bid at any sale under this conveyance We agree that the Trustee may at any time after default in payment of principle or interest as each falls due respectively,. enter and take possession of said property; and shall only account for net rents received, by him;.

We agree to Keep the improvements on said property in good repair and preservation and to pay all taxes and assessments and to pay them when due, and in case we fail to do either then said, Trustee,.or the creditor, herein secured may do either, and charge and treat the amount so expended, as a part of the debt herein secured;

In case of sale under this deed of trust , the proceeds will be applied,. by the Trustee,

First to pay all the costs and charges of executing, this trust, including attorney's fees, and the expense of any litigation which may arise on account of the execution and enforcement of this Trust

Second, To pay said debt or any balance thereof then remaining, unpaid

Third The residue to be paid, to Solomon. Koonce or order;

and in case of the death, absence, inability or refusal, to act of the said Trustee,. at any time when action under the foregoing Powers and Trusts, may be required,. the owner of the debt, herein secured,

is hereby authorized to name and appoint a successor to execute this trust and the title herein conveyed to S.H. Burnett, Trustee, shall be vested, in said Successors in the event of a sale of said property under and by virtue, of this trust, the said Parties of the First part and all persons holding under, them, shall be and become the tenants, at will of the purchaser, of the same, from and after the

execution and delivery of a deed, to such purchaser said tenancy to be determined, at the option of said Purchaser upon Five days written notice;.

This 19th, day of November, 1912.

hie
SOLOMON. / KOONCE E
mark
her
cherry / koonce
mark

STATE OF TENNESSEE)

CROCKETT COUNTY: Personally appeared before me, E.F.Boothe.

Notary public, in and for said county, and state,. Duly commissioned
sworn and acting, the bargainer. in the foregoing. and attached Deed
of Trust, Solomon. Koonce,. and his wife, Cherry Koonce,. Both
of whom I am personally acquainted, who, severally acknowledged, that
they executed the said Deed for the purposes therein contained, and
Cherry Koonce, wife of the said Solomon Koonce,. having appeared
before me privately and apart from her husband, the said Cherry
Koonce, acknowledged, the execution of said Deed to have been by
her freely, volentarily, and understandingly, without compulsion or
constraint from her husband and for the purposes therein expressed;
In Witness Where of. I have hereunto set my hand and official
at Office, on said state and county, this the 19. day of November

1912

SEAL)

E.F.Booth , notary public

I certify that the above trust was received, for Record, Nov. 21.1912
at 4.10. O'CLOCK. P.M. and so noted in Minute BOOK, No 3 page 326-327

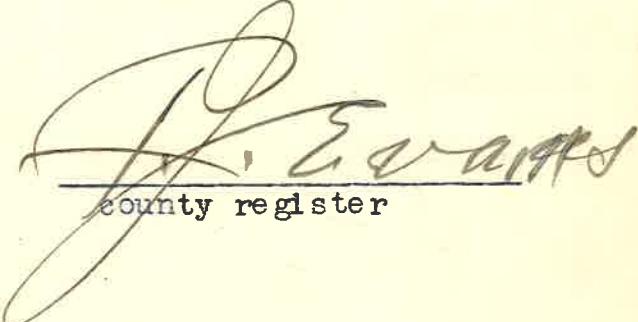
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G.L.Bennett. Register;

I.F.J.Evans. Certify this a copy of the instrument recorded, in the
Register's office at Alamo, Tennessee. Record, BOOK. "BB" page 526.

Executed by Solomon. Koonce & wife to S.H.Burnett as Trustee,.

This 28. day of Nov. 1925.


county register

SOLOMON E. KOONCE
his
mark
Cherry / Koonce
her
mark

STATE OF TENNESSEE)

CROCKETT COUNTY: Personally appeared before me, E.F. Booth,

Notary public, in and for said county, and state, duly commissioned
sworn and acting, the foregoing, in the foregoing, and attached Deed

of Trust, Solomon Koonce, and his wife, Cherry Koonce, both

of whom I am personally acquainted, who, severally acknowledged, that

they executed the said Deed for the purposes therein contained, and

Cherry Koonce, wife of the said Solomon Koonce, having appeared

before me privately and apart from her husband, the said Cherry

Koonce, acknowledged, the execution of said Deed to have been by

her freely, voluntarily, and understandingly, without compulsion

or constraint from her husband and for the purposes therein expressed;

In Witness where of, I have hereunto set my hand and official

at Office, on said state and county, this the 19. day of November

1912

E.F. Booth, Notary public

SEAL)

I certify that the above trust was received, for Record, Nov. 21. 1912

at 4.10. O'CLOCK. P.M. and so noted in Minute Book, No 3 page 226-227

G.L. Bennett, Register;

I.F.J. Evans. Certify this a copy of the instrument recorded, in the
Register's office at Alamo, Tennessee. Record, BOOK. "BB" page 226.

Executed by Solomon Koonce & wife to S.H. Burnett as Trustee..

This 28. day of Nov. 1925.

County register

S.A. BOOTH.

The next witness for the defendant was S.A. Booth, white, who being duly sworn testified as follows:

My name is S.A. Booth, am 45 years of age and am acquainted with all the parties to this suit.

Q. Are you the same S.A. Booth made trustee in a deed of trust executed by Whit Koonce and wife the 28th day of April 1920, in which they conveyed a tract of land about 47 acres of land, situated in the 8th Civil District of Crockett County, to secure payment on a note executed to S.H. Burnett for \$2504.90, payable November 15th, 1920?

A. Yes sir.

Q. At the time that deed of trust was executed did you know you were being made trustee?

A. No sir. I was not consulted about it and knew nothing of it until afterwards.

Q. Did you foreclose that deed of trust afterwards?

A. Yes sir.

Q. Did you sell the land under it?

A. Yes sir.

Q. What is this (handing witness paper)?

148 A. It is the deed I executed to Mr. S.H. Burnett purchaser of the land at the foreclosure sale ~~May~~ May 5th, 1924?

Q. Did Whit Koonce ever talk to you about this matter-the note?

A. Yes sir he tried to borrow the money from me to pay it, rather wanted me to take it up, but I refused. I didn't want to have any dealings with him as he owed me and does now for corn I let him have.

Q. Were you in any way interested in the mortgage or note which was executed by Whit Koonce to Mr. Burnett, April 28th, 1920? and which mortgage you are trustee of it?

A. In no way whatever as I stated knew nothing whatever about it until afterwards.

Q. I will ask you to file this deed as exhibit No. 1. to your testimony?

A. I will file and so mark it exhibit No. 1.

WHEREAS. White Koonce. and wife conveyed to me in trust the property hereinafter Described, to secure and make certain, the payment of the indebtedness, mentioned in said Trust Deed.

Register's office at Alamo, Tenn. in Deed of trust Record which is recorded in/ Book.H.H. at page 401 and 402. Which Deed of Trust authorized me, to sell the land herein conveyed, in Default, of the payment of said indebtedness, and Whereas, default was made in the payment of said indebtedness, and the Holder of the note therein secured, being the Bank of Alamo. at Alamo, Tenn; Having made demand on me to foreclose said Deed of trust by sale of said property; and

WHEREAS, I did on the 2nd day of April, 1924, advertise in the way and manner stipulated, in said Deed of Trust said land for sale; Fixing the date at 1 O'CLOCK. P.M. May 5th, 1924; and the place of sale in Front of the east door of the court house in the town of Alamo,. Tenn and

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WHEREAS, I exposed said lands for sale at said place and date to the highest bidder, when S.H. Burnett offered a bid of \$2470.00 which was the highest and best bid offered, Whereupon, I struck Off and sold said lands to him for the said sum thereof;

For and in consideration of Twenty Four Hundred. Seventy and 00/100 Dollars.(\$2470/00) Cash in hand paid, receipt of which is hereby acknowledged, I.S.A Boothe,. Trustee, have this day bargained, sold and do hereby transfer and convey unto said S.H. Burnett the following described Tract or parcel of land;-
Situating in the 8th, civil District of crockett county, Tennessee; and beginning at JIM Walker's N.E Corner, with Elm and sweet Gum

Pointers, runs. east $33\frac{1}{2}$ Poles to John Cleek's, west boundary line;
thence North with J.H.Cleek's, and S.H.Burnett's, west boundary
line, 216 poles to A.P. Moore's N.E Corner;. thence west with said
A.P. Moore's. North boundary line; $35\frac{1}{2}$ poles to a stake JIM Walker's
S.E Corner;. on A.P. Moore's, North boundary line; thence North
216 Poles to the beginning, containing, $46-7/8$ acres, more or less;
Reference is here made to said Deed of Trust for a more perfect
description;. of said lands

TO HAVE AND TO HOLD unto him the said S.H.BURNETT, his heirs
or assigns forever;.

I Covenant with the said S.H.Burnett that I am the Trustee named,
in said Deed of Trust. that all the requirements of said Deed of

Trust, prior to sale of said property have ^{and} Heppened, ^{and} Have been ^{Do} Done and Have . Been

/ Performed. in the proper and legal way, and I hereby convey said
Tract of land to him in as full and perfect a manner as in can
convey the same, believing the title thereto to be absolute, But

I make this conveyance as Trustee only;

Witness whereof. I have this day set my hand, this the 5th day of
May, 1924;

S.A. BOOTH.

STATE OF TENNESSEE:

CROCKETT COUNTY) Personally appeared before me H.B.NANCE, a

Notary public in and for said county and state,. the within Named

S.A Booth. the within named Bargainor. with whom I am personally

acquainted and who acknowledged, that he executed the within

Instrument for the purposes therein contained;.

Witness my hand, and official seal, at ALAMO. Tennessee, this

5. day of May, 1924.

H.B NANCE. notary Public

SEAL)

My commission expires, . July. 12, 1925;

Filed for recd. 5. day of May, 1924, at 4. P.M. Noted. in Minute

Book. No.5. page 45/

F.J.Evans. Register;

I.F.J EVANS. REGOSTER OF CROCKETT COUNTY. TENNESSEE,. certify this

to be a true copy of the instrument recorded, in Deed BOOK

No.5. at page,. 70. Records, crockett county, Tenn.

Witness my hand. this 30th. day of December, 1924.

F. J. Evans
COUNTY REGISTER;

Witness my hand, this 30th day of December, 1924.

No. 5. at page, 70. Records, Crockett County, Tenn.

to be a true copy of the instrument recorded, in Deed Book

I, F. J. EVANS, REGISTER OF CROCKETT COUNTY, TENNESSEE, certify this

F. J. Evans, Register;

Filed for record, 30th day of May, 1925, at 4 P. M. Noted. in Minute

My commission expires, July 15, 1925;

SEAL)

Cafery
J. A. Southwick
Deed

J. H. Burmes

60x

to Quas. X

kill

5. day of May, 1924.

Witness my hand, and official seal, at ALAMO, Tennessee, this

Instrument for the purposes therein contained;

H. B. MANOR, Notary Public

4150

NED KOONCE.

The next witness for the Defendants, Ned Koonce, -who being duly sworn testified as follows:

My name is Ned Koonce--I am 56 years of age.

Examination by Mr. Jerman.

Q. Are you a son of Solomon Koonce, the complainant?

A. Yes sir.

Q. How long have you known Mr. S. H. Burnett, one of the defendants in this case?

A. A good many years--we were raised right there together on adjoining places.

Q. Did you know of it at the time your father Sol Koonce divided the tract of land, between Jim Walker and your brother Whit Koonce in April 1920?

A. Yes I knew of it.

Q. Did your father tell you about it?

A. Yes sir he talked to me about it--we all knew about it.

Q. What did he say about it--your father Sol Koonce?

A. He said Jim Walker and Whit were going to pay what he owed Mr. Burnett and he was going to deed them the land, they all knew about it.

Q. Do you know anything about what your father owed Mr. Burnett?

A. No sir, I don't know exactly, but I know Pa owed Mr. Burnett.

Q. What did he owe Mr. Burnett for, if you know?

A. Well first one thing and another. He got money from him bought things from him, corn and hay and things. Whenever I wanted any money I went to him for it and if he didn't have it he went to Burnett and got it.

Q. Most all of his children did that way, didn't they Ned?

A. Pretty much, yes sir.

Q. Ned do you know anything about your father buying corn ~~xxx~~ from Mr. Burnett?

A. Yes sir, he bought corn from him lots of time--all along for years.

Q. Did you ever visit your father while he lived with Jim Walker

after the division of this land?

A. Yes sir.

Q. How did they treat your father and mother?

A. Well, sir, as far as I could see they treated them well--they had plenty to eat and plenty of clothes and a good bed to sleep on and plenty of everything. Yes sir they were well treated.

Q. Did your father ever talk to you about Mr. Burnett?

A. Yes sir. He always thought lots of Mr. Burnett--he praised him mightily until this suit started. Always thought a heap of Mr. Burnett. Said Mr. Burnett was good to him--said he didnt know what he would do without him. Help him him when nobody else would.

CROSS EXAMINATION OF NED KOONCE.

Q. Where are you living now?

A. I am living now at Maury City.

Q. Where did you live last year?

A. With Mr. Sam Burnett.

Q. How many years have you lived with the defendant Burnett?

A. I dont know, I lived with him before I went to Gold dust, I lived there five years and then come to Mr. Sam Burnetts again.

Q. How often have you and Mr. Burnett talked this law suit over since your father sued him?

A. I dont know, we have talked about it.

Q. You say your ftaher bought corn, hay and provisions from Mr. Burnett, please tell me what year he bought any corn, hay flour or anything else from him?

A. I cant tell the years but I know he bought them.

Q. How much corn did he buy at any one time?

A. I dont know.

Q. Can you tell the amount of corn, hay, flour or supplies he bought at any one time or in any one year?

A. No sir I just know he bought it.

Q. Mr. Burnett got your land your father gave you did he not?

A. Yes sir, Charlie ownes it now.

Q. Your father had to pay \$200.00 to Mr. Childress a few years a ago fer you did he not for a horse?

A. Not all I paid \$40.00 on it, pap paid the balance.

Q. You are a stout able bodied man are you not?

A. Yes sir.

Q. Your father has been in a very feeble condition in body and mind for several years has he not?

A. Yes sirmore so since he had a spell of flu.

Q. His mental and physical condition is about the same now as it has been for several years, has it not?

A. Yes sir I dont see any difference about the same.

JOHN CLEEK.

The next witness for the defendants was John Cleek, white, who being duly sworn testified as follows:

My name is John Cleek, I am 50 years of age, and acquainted with all the parties to this suit.

Q. Do you know the tract of land which Sol Koonce deeded to his son Whit Koonce April 28th, 1920?

A. Yes sir I own a farm there adjoining it.

Q. What kind of place is this 47 acre tract Sol deeded to Whit?

A. It is a pretty good place, of course there is some thin land on it, but some of it is good land, good made bottom land, will never wear out, the place ought to be worth \$75.00 or \$80.00 per acre on payments of one third cash, balance on payments, one, two, three years.

Q. Are you acquainted with the location of the tract adjoining this 47 acres?

A. Yes sir.

Q. Whose land is on the North and East of this land?

A. J.H. Cleek and S.H. Burnett.

Q. Who is South and west of it?

A. A.P. Moore is on the South and Jim Walker is on the West.

CROSS EXAMINATION OF JOHN CLEEK BY THE COMPLAINANT.

Q. You are a special friend of the defendant S.H.Burnett, are you not?

A. Yes live in 300 yards of him.

Q. The place you live on you bought it from him did you not?

A. Yes.

Q. What kind of land is it that the complainant deeded to Whit Koonce and Jim Walker?

A. It is fine land, some thin spots about on it.

Q. What do think that land is worth on the terms stated to you by the counsel of the defendants?

A. Seventy five or eighty dollars per acre with the incumbrance that is on on it. It would make very little difference in the price with the incumbrance. It is fine land, level made bottom land and will never wear out.

Q. Did Mr. Burnett sell to Will Privitt twenty six acres since Sol made his deed to Whit and Jim for \$2600.00?

A. Yes.

Q. The land Burnett sold Privitt joined the land in controversy on the south side, dont it and about the same quality?

A. Yes.

Q. You and the defendant Burnett have discussed the matter considerable since the suit was instituted have you not?

A. Yes a good deal, we have not talked about it in two weeks.

Q. How long have you known the complainant?

A. All my life, was raised and always lived in sight of him, been to his house often.

THIS IS ALL OF THE EVIDENCE INN THE CASE.

After hearing all the pleadings, all the evidence and argument of counsel, the Court rendered the following decree, which is recorded on the Minute Books of the Court as follows:

Solomon Koonce,

Vs

No. 1624.

Whit Koonce, Sam H. Burnett and S.A. Booth.

Solomon Koonce,

Vs

No. 1625.

Sam H. Burnett, Jim Walker and S.A. Booth,

And

Sam H. Burnett, Cross complainant,

Vs

Solomon Koonce, Whit Koonce, cross Defendants.

157 Be it remembered that these two cases, by consent of all the parties were consolidated, and by an agreement of all parties to be tried, before The Honorable Tom C. Rye, Chancellor on the pleadings, exhibits and oral testimony in open Court, and in pursuance of said agreement, the cases were heard on this the 1st day of December 1925, it being one of the term days of the November Term, upon the original and amended bills, and exhibits to said amended bills, the answers and exhibits thereto, cross-bill of S.H. Burnett and answer of the cross defendant, judgments, pro confesso taken and entered against the defendant Whit Koonce; the contract of articles of agreement signed and given to complainant Solomon Koonce, by the defendants Whit Koonce and Jim Walker and the entire record, including all the oral testimony and pleadings from all of which it appears to the satisfaction of the Court, that on the 28th of April in the year of 1920 that the complainant Solomon Koonce and wife Cherry Koonce executed and delivered deeds to the defendants Whit Koonce and Jim Walker to certain land in the 8th Civil District of Crockett County, Tennessee, set out and described as follows in said deed; the one to the defendant Whit Koonce viz;

We, Solomon Koonce and Cherry Koonce of Crockett County, Tennessee, for the consideration of one dollar cash in hand paid, and the further consideration here mentioned passes to Whit Koonce, but the said Solomon Koonce and wife Cherry Koonce retains the right and title to said lands for their support during their natural life; and for burial expenses, have this day bargained and sold and conveyed to Whit Koonce of Crockett County, Tennessee, all of our right, title and interest into a certain tract, except as above mentioned and bounded as follows:

Beginning at Jim Walkers N.E. Corner with Elm and Sweet Gum pointers and runs east $33\frac{1}{2}$ rods to J.H. Cleeks west boundary line; thence north with J.H. Cleek and S.H. Burnett west boundary line 216 rods to A.P. Moore's N.E. corner; thence west with A.P. Moore's north boundary line $35\frac{1}{2}$ rods to Jim Walkers south east corner on A.P. Moore's north boundary line; thence North 216 rods to the beginning, containing forty six and seven-eighths acres more or less.

It further appearing to the satisfaction of the Court that at the same time and place, ~~to~~ to-wit: the 28th day of April 1920, the said Solomon Koonce and wife Cherry Koonce conveyed by deed the remainder of his land to the defendant Jim Walker, being $46\frac{7}{8}$ acres more or less using the following words and figures to-wit:

158 We Solomon Koonce and wife Cherry Koonce of Crockett County, Tennessee for an in the consideration of one dollar cash in hand paid and the further consideration pass to Jim Walker, but the said Solomon Koonce and wife Cherry Koonce retain the right and title to the said land for their support during their natural lives and for their burial expenses, have this day bargained and sold to Jim Walker of Crockett County, Tennessee, his heirs and assigns forever, all our right, title; except as above mentioned to a certain tract of land bound as follows:

Beginning at the South West corner of a five acre tract of land deeded to Charlie Koonce and runs thence east $33\frac{1}{2}$ rods South 216 rods to A.P. Moores North boundary line; thence west $35\frac{1}{2}$ rods to Charlie Koonce South east corner; thence North 216 rods to the beginning, containg ~~46~~ forty six and seven eight acres more or less.

And it further appearing to the satisfaction of the Court that at the same time and place to-wit; 28th of April 1920, the defendants S.H. Burnett wrote a contract or agreement for the defendant Whit Koonce and Jim Walker to sign and deliver to the complainant Solomon Koonce, which was then and there signed and delivered to the complainant in the presence of S.H. Burnett and was a part of the consideration that induced the complainant and wife to execute and deliver said deed to the defendants Whit Koonce and Jim Walker of which he was the originator and which reads as follows:

"This article of agreement between Whit Koonce and Jim Walker is to pay Solomon Koonce the sum of four hundred dollars equally divided between us as their support from year to year as long as they live and after meeting all expenses, doctor bills and burial expenses, if any personal property is left it is to be equally divided between us.

Signed. Whit Koonce and Jim Walker.

This agreement was delivered to the complainant by the said Sam Burnett with instructions not to let anyone have it.

159 It further appearing to the Court, that at the same time and place the defendant Sam H. Burnett, claimed that the complainant Solomon Koonce was indebted to him by note due the 15th of November 1913 in the sum of Fifteen Hundred Dollars, and that he had a deed of trust on the said two tracts of land to secure said note, and that he had other claims against the complainant, which added to the note with interest made Forty Four Hundred Seventy Eight Dollars and Eight Five cents, and that he would agree to cut the debt in to and make two distinct debts, if the defendants Whit Koonce and Jim Walker would assume the payment of the same and secure it by mortgage on their respective tracts of land that the complainant had deeded them.

Thereupon the defendant Whit Koonce gave said Burnett a note for Twenty Five Hundred and four dollars and ninety cents, due 15th of November 1920 and a deed of trust on his tract of land that complainant had deeded him that day.

The defendant Jim Walker gave his note for Nineteen Hundred and Seventy Three dollars and ninety five cents and secure the same with a deed of trust on his tract making the defendant S.A. Booth, trustee in both cases, that the defendant Sam H. Burnett, advised and directed the transaction and had full knowledge of all details.

It further appears to the satisfaction of the Court, that the said deed of trusts executed to S.A. Booth by defendant Whit Koonce has been foreclosed by the trustee S.A. Booth and that the defendant Sam H. Burnett became the purchaser of the Whit Koonce tract, has the title in himself by virtue of the deed from the said S.A. Booth, trustee, and is now seeking to get possession of said lands. But the trust deed from Walker to Booth has not been foreclosed, and said Walker is in possession under his deed from the complainant, enjoying the rents and profits of the same.

It further appears to the satisfaction of the Court, from the face of the deeds, exhibits and the proof in the case, that the complainant did not divest himself of his right, title and interest in said land and vest the same in the defendants Whit Koonce and Jim Walker, except the remainder interest after the death of the complainant; all of which is so adjudged and decreed by the Court.

160 It further appearing to the satisfaction of the Court that the complainant Solomon Koonce retained all the right, title and interest in said land as long as he lives for his support, maintenance and burial expenses, and it is so adjudged and decreed by the Court.

It further appearing to the satisfaction of the Court that at the time the complainant made and delivered said deeds to the defendants Whit Koonce and Jim Walker, that the complainant was very old, very feeble in mind and body, and just prior to said transaction had a very serious spell of sickness and he was incapacitated to contract, because of the unsoundness of his mind, and that said Sam H. Burnett was closely connected with him at the time; and so adjudged and decreed by the Court.

It further appearing to the satisfaction of the Court, that the complainant has no other property or means of support whatever,

and is in a helpless condition and is a proper subject for protection of the Court and that it is necessary for some one to be appointed to look after him and his estate and manage the same, and to see he is well cared for, a good home provided for him, with comfortable clothing and necessities of life.

It is therefore, orderde, adjudged and decreed by the Court that Doyle Henderson be appointed trustee to take charge of him and his estate, look after his welfare, see that he has a good home and the necessities of life, clothing and provision.

That said trustee give bond in the sum of One Thousand Dollars, conditioned as provided by law in such cases, and take oath to faithfully perform the duties as trustee and make his report at each term of the Court of his do~~ing~~ing in the premises at each term of the Court, and adjudged and decreed by the Court.

It further appearing to the satisfaction of the Court, that the defendants Whit Koonce and Jim Walker are severally and jointly indebted to the complainant as follows, to-wit:

For the year 1920, April the 28th:	\$266.33 Principal
Interest to date at six per cent,	90.48
Total,	<u>\$ 356.81</u>

For the year 1921,	\$400.00 Principal
Interest	118.00
Total	<u>\$518.00</u>

For the year 1922	\$400.00 Principal
Interest	94.00
Total	<u>\$494.00</u>

For the year 1923, principal,	\$400.00
Interest	70.00
Total	<u>\$470.00</u>

For the year 1924, principal	\$400.00
Interest	46.00
Total	<u>\$446.00</u>

For the year 1925, principal,	\$400.00
Interest	22.00
Total	<u>\$422.00</u>

and total owing and due the complainant Solomon Koonce up to date, Twenty Seven Hundred and Six Dollars and eighty one cents and that there is a lien on said lands to make certain the payment of the same, and it is so adjudged and decreed by the Court.

It is further ordered, adjudged and decreed by the Court, that the said defendants Whit Koonce and Jim Walker or those holding under them; pay into the hands of Doyle Henderson, Trustee the said sum of Twenty Seven Hundred and Six Dollars and eighty one cents.

Five Hundred Dollars of said amount within five days from this date, and the remainder to be paid into his hands by the first of January 1926, and it is so ordered, adjudged and decreed by the Court.

In the event said money is not paid to said trustee as herein directed; the Clerk and Master will advertise said lands for sale by printed posters for thirty days and sell the same at the West door of the Court House at Alamo, for cash to the highest and best bidder and make his report to the Court of his action in the premises, all of which is ordered, adjudged and decreed by the Court.

It is further ordered, adjudged and decreed by the Court, that the said Whit Koonce and Jim Walker or those holding under them pay into the hands of said trustee or his successor in office, commencing the first day of January 1926, pay four hundred dollars each year as long as the complainant lives, or any additional sum in the judgment of the Court that is necessary for the proper support and maintenance of the complainant, and to secure the same a lien is hereby declared on said land to make certain the payment of the same, and to be enforced as herein indicated above as to the other payments, all of which is so ordered, adjudged and decreed by the Court.

It is further ordered and decreed by the Court that the defendants pay the cost of this suit for which execution may issue as at law.

It is further ordered and decreed by the Court that these cases be retained in Court for such other orders as may become necessary in reference to the complainant of his estate.

It further appearing to the satisfaction of the Court that the defendant Jim Walker furnished the complainant some clothing that he paid a doctors bill, and furnished the complainant some money, making a total of \$180.00 which should go as a credit on the amount due the complainant and is so ordered and decreed by the Court.

To all of which and the foregoing decree the defendants S.H. Burnett and Jim Walker except and from which decree said defendants pray an appeal to the next term of the Court of Appeals, at Jackson, Tennessee. And said defendants S.H. Burnett and Jim Walker having tendered a sufficient Appeal Bond in the sum of \$5600.00 conditioned to secure the judgment and costs as required by law, the same has been filed and the appeal granted and by agreement of the parties to the suit, they are given until January 1st, 1926, in which to file their bill of exceptions.

Solomon Koonce

Vs

No.1624.

Whit Koonce, S.H. Burnett,
and S.A. Booth.

And

Solomon Koonce,

Vs

No.1625.

S.H. Burnett, Jim Walker
and S.A. Booth

Tried in the Chancery Court at Alamo, Tenn. November Term 1925.
The two cases having been heretofore consolidated and by consent
tried to-gether.

The complainant Solomon Koonce objects and excepts to so
much and such parts of the judgment and decree of the Chancellor,
that vest remainder interest in said two tracts of land therein
set out and described in the defendants Whit Koonce and Jim Walker
respectively and because ^{he} did not set aside the deed of Solomon
Koonce to Whit Koonce and Jim Walker and allow rents on the Walker
tract and also the part of the decree vesting the legal title
of the Whit Koonce tract of land in the defendants S.H. Burnett
by virtue of the deed from S.A. Booth, trustee and prays an appeal to
the ~~Civil~~ Court of Appeals sitting at Jackson, Tennessee, for the
Western District of Tennessee, which is granted on condition that
the complainant Solomon Koonce file and appeal ^{sum} in the peality
of \$250.00 condition as required by law or file the paupers oath
in lieu in ^{an} appeal bond and by consent of all parties to said
suit, complainant is given until the 1st day of January 1926 in
which to file his appeal bond or paupers oath.

When the bond or oath is filed the Clerk and Master will at once
make out a correct copy of the transcript of all papers records, decree,
including the bill of exception, the entire record in said case to
gether with the minutes of the Court and all other matters required
by law in such cases and transmit the same to the Supreme Court
Clerk at Jackson, Tennessee.

The complainant thereupon excepted to the action of the Court in vesting the remainder interest in the two tracts of land, that complainant deeded to the defendants Whit Koonce and Jim Walker on the 28th of ^{April} ~~August~~ 1920 and also excepted to that part of the decree that vested the legal title in the Whit Koonce tract of land in the defendant Burnett because of his deed from the trustee S.A. Booth in May 1924 and because ^{he} did not set aside the deeds that complainant made the defendants Whit Koonce and Jim Walker on the 28th of ^{all rights on the Koonce tract and} ~~April~~ 1920; and, prays an appeal to the next term of the ~~Civil~~ Court of Appeal setting at Jackson, Tennessee for the western district of Tennessee, which appeal was by the Court granted. Upon complainant executing appeal bond in the sum of \$250.00 or by filing the oath prescribed for poor persons.

Thereupon the Complainant, tenders this ~~bill~~ his bill of exception which is signed by the Chancellor and ordered filed and made a part of the record in this case. This December 1925.

To all of which and the foregoing decree the defendants Sam H. Burnett and Jim Walker and pray an appeal to the next term of Court of Appeals at Jackson, Tennessee, which appeal is granted upon defendants executing appeal bond as required by law with two or more solvent securities, conditioned as required by law, and thereupon the defendant tender this their bill of exception which is signed by the Chancellor and ordered filed and made a part of the record in this case.

This Dec. 29th, 1925.

Tom C. Rye,
Chancellor.

DEFENDANTS APPEAL BOND.

State of Tennessee.

Crockett County.

Know all men by these presents that we, S.H.Burnett and Jim Walker, principals, and Clarence Hays and S.A.Booth, sureties, are indebted to and hereby acknowledge ourselves bound to Solomon Koonce in the penal sum of Fifty Six Hundred (\$5600) Dollars to be levied of our goods, lands and chattels. But the condition of this bond is as follows: Whereas the said S.H.Burnett and Jim Walker have appealed from a judgment or decree of the Chancery Court at Alamo, Tennessee, rendered by the Hon.T.C.Rye, Chancellor at the November Term, 1925, of said Court (in the cases of Solomon Koonce vs S.H.Burnett, Jim Walker et al, said case being Nos.1624 and 1625 consolidated) to the next Term of the Court of Appeals at Jackson, Tennessee. Now therefore if the said S.H.Burnett and Jim Walker abide by and perform the decree of the Court of Appeals or that of the Supreme Court--satisfy the judgment and costs--this bond is of no further force and effect; otherwise to remain in full force and effect.

Filed and approved December
31st, 1925.

Doyle Henderson,
Clerk and Master.

Jim Walker
S.H.Burnett.
S.A.Booth,
W.C.Hays.

PAUPERS OATH OF COMPLAINANT.

Solomon Koonce,

Vs.

No.1624.

Whit Koonce, S.H. Burnett and
S.A. Booth.

I, the complainant Solomon Koonce in the above style cause; do solemnly swear that I am a resident of the State of Tennessee, that owing to my poverty, I am not able to bear the expense of an appeal by me prayed to the next term of the Court of Appeals, sitting at Jackson, Tennessee, for the Western Division of Tennessee from a decree of the Chancery Court of Crockett County, Tennessee, rendered on the 1st day of December 1925, in the case No. 1624 of myself complainant and Whit Koonce, Sam H. Burnett and S.A. Booth, defendants, and that I am entitled to the relief sought to the best of my knowledge and belief.

His
Solomon X Koonce
Mark

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Sworn to and subscribed before me this the
19th day of December 1925.

W.C. Fly, J.P.

PAUPERS OATH OF COMPLAINANT.

Solomon Koonce,

Vs.

No.1625

S.H.Burnett, S.A.Booth and

Jim Walker.

I, the complainant Solomon Koonce in the above style cause; do solemy swear that I am a resident of the State of Tennessee, that owing to my poverty, I am not able to bear the expenses of an appeal by me prayed to the next term of the Court of Appeals, sitting at Jackson, Tennessee for the Western Division of Tennessee, from a decree of the Chancery Court of Crockett County, Tennessee, rendered on the first day of December 1925, in the case No.1625, of myself complainant and, Sam H.Burnett, S.A.Booth and Jim Walker, defendants, and that I am entitled to the redress sought to the best of my knowledge and belief.

His
Solomon X Koonce
Mark

Sworn to and subscribed before me this the
19th day of December 1925.

W.C.Fly, J.P.

Solomon Koonce,

Vs.

No.1624.

Whit Koonce, et als.

BILL OF COST.

Filing original bill,-----	\$.25
Affisavit of Complt.to O.B.-----	.25
Copy of O.B. to defendants,-----	2.00
Subpoena to answer,-----	.75
Injunction,-----	1.00
Attachment,-----	1.00
Entering cause on execution docket,-----	.50
" " " 3 hearing dockets,-----	.30
Filing answer & cross bill,-----	.25
Subpoena to answer cross bill,-----	.75
Copy of answer & Cross bill,-----	1.50
Filing ans.of S.A.Booth,-----	.25
Filing Bond for modification of injunction,-----	.25
Filing ans of Solomon Koonce to cressbill,-----	.25
Continuance,-----	.25
Final decree,-----	1.25
Filing appeal bond,-----	.25
Filing paupers oath,-----	.25

State tax,-----	2.50
County tax,-----	2.50

169 F.J.Evans making copies of eight deeds & deeds of trust,----- 11.50

J.C.McLena, Sheriff ,serving Spa.to ans.on 3 defts,--	3.00
" " McLean, " executing attachment of three	
defendants,-----	3.00
J.C.McLean, Sheriff executing injunction on three	
defendants,-----	3.00
J.C.McLean, Sheriff, serving Spa.to Ans. and copy of	
cross bill on Solomon Koonce and Whit Koonce,-----	2.00

W.C.Fly, J.P.taking affidavit of complainant to	
paupers oath,-----	.50

Total cost in cause No.1624,-----\$38.05

CERTIFICATE.

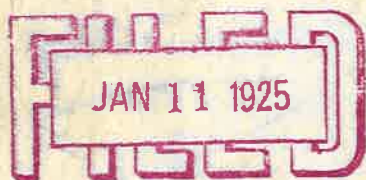
I, Doyle Henderson, Clerk and Master of the Chancery Court at Alamo, Tennessee, certify that the foregoing is a full, true and perfect transcript of the record and bill of cost, remaining in my office, in the case, No. 1624, of Solomon Koonce, complainant, against Whit Koonce, Sam H. Burnett and S.A. Booth, and in the case No. 1625, of Solomon Koonce, complainant, against Sam H. Burnett, Jim Walker and S.A. Booth.

Witness my hand, and seal of said Court, this January 7th, 1926.

Doyle Henderson
Clerk and Master.

IN THE COURT OF APPEALS, JACKSON TENNESSEE .

ASSIGNMENT OF ERRORS AND BRIEF OF APPELLANTS, S.H.BURNETT
AND
JIM WALKER.



J. E. SPRINGBETT, Clerk

SOLOMON KOONCE

Vs.

S.H.BURNETT, JIM WALKER ET AL.

FROM THE CHANCERY COURT
AT ALAMO.

CASES, NOS. 1624 and 1625
CONSOLIDATED.

The Complainant below, Solomon Koonce, filed two suits in Chancery Court at Alamo,. By agreement, the cases were consolidated, tried and disposed of as one case, and brought to this Court in one Record(Page 1. Transcript).

The purpose of the suit as set forth in the Original Bills, was to have declared void and set aside, two conveyances -- DEEDS-- which Complainant alleged were obtained from him by fraud, but which he admitted were executed by him April, 28th. 1920.

The Deeds complained of were: A conveyance by Complainant, Solomon Koonce and wife Cherry Koonce to Whit Koonce, a son of Complainant, of a Tract of about 47 Acres of land, situated in the 8th. Civil District of Crockett County Tennessee.

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The other Deed being to the Appellant, Jim Walker, who is a Son in law of Complainant, and transferred him a tract of about 47 Acres, also situated in the 8th. civil district of Crockett County Tennessee.

The Bills show that Complainant formerly owned 250 Acres of land,; that by gradually conveying portions of it to his children his acreage was reduced to 95 Acres. This 95 acres, he divided between his son Whit Koonce and son in law Jim Walker, and executed Deeds to them, as above set forth April, 28th. 1920.

The bills further averred: That on the same date and day (April 28th. 1920) the said Jim Walker executed his note to S.H. Burnett in the sum of \$1973. and secured it by execution of a Deed of Trust on the tract of 47 Acres, which Complainant had just deeded to him, and That: His son, Whit Koonce, at the same time (April 28th. 1920) executed his note to S.H. Burnett, calling for payment of \$2504. and secured this note by a Deed of Trust on the 47 Acres of land, which Complainant had just conveyed to him. In both of said Deeds of Trust, S.A. Booth, was named as Trustee.

The Bill set forth that: On the 5th. day of May, 1924, the Deed of Trust executed by Whit Koonce was foreclosed and the land purchased at the sale thereof, by S.H. Burnett.

The Deed to Whit Koonce may be seen at page 13 --; the Deed to Jim Walker at page 57--- the Deed of Trust executed by Whit Koonce at page 15 and the Deed of Trust executed by Jim Walker at page 59 of the Transcript.

It was insisted that the Descriptions contained in the Deeds were insufficient to carry title. Incidental to the suit injunctions were asked to restrain S.H. Burnett and Jim Walker from going on the lands. As alternative relief a judgment was asked against the Defendant and lands.

Defendants, S.H.Burnett, Jim Walker and S.A.Booth filed answers and S.H.Burnett filed an answer in the nature of a Cross Bill, in which he asked that any error or omission in the description of said land be corrected by Decree of Court; averring that the lands were well known to all parties to the transaction and that the Deeds contained such a description and reference to other lands, monuments and boundaries as rendered it no trouble to locate the lands conveyed.

In reply to the allegations of fraud, the answer averred: That at the time the transactions were had (April 28th. 1920) Complainant, Solomon Koonce was indebted to S.H.Burnett to the extent of about \$4000.00. That the larger part of this indebtedness was secured by Deeds of Trust on this very tract of 95 acres of land which Complainant divided and conveyed to his son Whit Koonce and son-in-law, Jim Walker. That Complainant, Solomon Koonce, realized that he would never be able to pay his indebtedness and by agreement of all parties to the transaction: Complainant divided this tract of land and conveyed it to the said Whit Koonce and Jim Walker; that the said S.H.Burnett cancelled the indebtedness, as to Complainant, and let the said Whit Koonce and Jim Walker assume it and took their notes, secured by Deeds of Trust on the land, which Complainant conveyed them.

The answers further set out, That: One item of Complainant's indebtedness was a balance due on a \$600. note which he (Complainant) executed to one O.G.Birmingham, and secured by a Deed of Trust on this land in question, and which note, at the instance of Complainant, S.H.Burnett took up for him by paying the said O.G.Birmingham and having the note endorsed to said S.H.Burnett.

That in dividing the indebtedness between themselves, the said Jim Walker would not agree to assume, pay or have his part of the land encumbered by this balance--the balance due on this \$600. note--because he pointed out that Complainant had in reality borrowed this \$600. for one of his sons, to wit: Ike Koonce, a brother of Whit Koonce and he (Jim Walker) felt that it was the place of the

said Whit Koonce to assume and pay this balance. This accounted for the difference in their notes and to which arrangement, Whit Koonce agreed. Jim Walkers part of the indebtedness being \$1973. and Whit Koonces being \$2504. Interest being added to the notes for the time they were to run.

THE ANSWER OF JIM WALKER: Disclaimed knowledge of any fraud whatever, setting up that the arrangement was made at the instance of Complainant. That Complainant wanted to convey this land to him(Walker) and Whit Koonce, provided they would assume payment of Complainant's indebtedness to S.H. Burnett and support Complainant and his wife and give them burial.

The answer further set out that he(Walker) had kept interest paid on the note and at the time the answer was filed had cut the principal down to about \$1200. and expected that year(1925) to reduce it to \$1000 and had kept taxes paid on the land conveyed to him.

The answer further averred that: In January 1921, after receiving his Deed in April, 1920, he(Jim Walker) moved on the land and immediately Complainant and his wife Cherry Koonce moved into the house with them.

That for a period of 20 months thereafter Walker and his wife Annie who is a daughter of Complainant waited on and took care of the said Complainant and his wife Cherry Koonce, and at that time(expiration of the 20 months) Cherry Koonce died; that he Jim Walker and Whit Koonce paid her burial expenses; that for a period of 7 months thereafter the Complainant lived with and was supported by the said Walker and then moved into the house with Whit Koonce and has been with him ever since.

COMPLAINANT FILED ANSWER TO THE CROSS BILL, which amounted to a reiteration of the charges and allegations in his bill and in which he denied specifically that he owed S.H.Burnett anything at the time the Deeds were executed, April 28th. 1920--- denied having ever owed him anything--- denied having ever discussed the division of the land with Jim Walker--- denied the execution of the notes and Mortgages mentioned in the Answers and Cross Bill. On this point making the following fervid denial:

" The statement in said Burnetts Cross Bill that this Cross Defendant, owed him \$1500. by note with 6 years interest, at the time the said pretended deeds were supposed to be executed on the 28th. of April 1920, and referred to a mortgage dated in 1907, was ASTOUNDING REVELATION to this Cross Defendant"

WHIT KOONCE FILED ANSWER TO THE CROSS BILL, which amounted as far as possible to a corroboration of Complainants charges and allegations and theory of the case.

AMENDMENT TO THE ORIGINAL BILL , was asked and made on the day the case was tried,.The amendment prayed, was accompanied by an affidavit of W.F.Poston, Counsel for Complainant to the effect that Complainant had a severe spell of illness a short time before the Deeds were executed; that affiant had only seen the Complainant twice since the Bills were filed and "he (Affiant" did not have the opportunity to better acquaint himself with the real conditions"

The amendment was to the effect that Complainant was old and feeble and unsound of mind and had been over reached by S.H.Burnett.

ISSUES .

The issues on the pleadings were largely matters of fact, involving the questions of whether any element of fraud entered into the various transactions enumerated in the pleadings(2) whether Complainant was induced to execute the Deeds by false or fraudulent representations(3) whether he was over reached or imposed on or fully understood what he was doing(4) whether he owed S.H. Burnett at the time the Deeds were executed as set forth in the Answers (5) what was the consideration for execution of the Deeds (6) whether Complainant executed the Deeds on condition and for the considerations of Whit Koonce and Jim Walker assuming his indebtedness to S.H. Burnett and agreeing to support Complainant and his wife Cherry Koonce and give them burial(7) whether that agreement had been complied with.

DECREE.

The decree of the Chancellor did not undertake to set aside any of the conveyances but held:

That Complainant vested Whit Koonce and Jim Walker with a Remainder interest only in the land, and subject to the life estate of Complainant and his wife(2) a judgment in the sum of \$2706.81, was rendered in favor of Complainant against Jim Walker and Whit Koonce and "those holding under them" and a lien declared on the lands referred to satisfy the Judgment(3) Jim Walker and Whit Koonce were ordered, beginning with January 1st. 1926, to pay into the hands of the Clerk & Master the sum of \$400. yearly, for the use and benefit of Solomon Koonce and this part of the decree was directed against those "holding under them" (Walker and Whit Koonce) and a lien declared on the land for its satisfaction.

The Decree ignored the Cross Bill of S.H. Burnett, made no adjudication as to Complainants indebtedness to Burnett, nor the description of the land and adjudged the costs against the Defendants.

ASSIGNMENTS OF ERRORS .

FIRST: We think the Chancellor erred in his construction of the Deeds, executed by Complainant, April, 28th. 1920, in that he Decreed that said Deeds only vested Whit Koonce and Jim Walker with remainder interests in said lands, and that Complainant reserved to himself and wife a life estate therein.

SECOND: We think the Chancellor erred in holding that the private written agreement between Whit Koonce and Jim Walker, (whereby they agreed between themselves the support of Solomon Koonce and his wife Cherry Koonce was \$400. a year and for which each, Whit Koonce and Jim Walker were bound for half) was part of the consideration for the execution of said Deeds by Complainant.

THIRD: We think the Chancellor erred in holding that Complainant was a party to this written agreement.

FOURTH: We think the Chancellor erred in rendering judgment against Jim Walker and Whit Koonce ,or either of them for the sum of \$2706.81 or for any sum whatever, based on said writing referred to above ,or based on any agreement relative thereto.

FIFTH: We think the Chancellor erred in declaring a lien on the lands referred to for satisfaction of said judgment, or rendering said judgment against "those holding under them" (Whit Koonce and Jim Walker)

SIXTH: We think the Chancellor erred in ordering Whit Koonce and Jim Walker and those holding under them to pay into the hands of the Clerk

& Master, beginning with January 1st. 1926, yearly the sum of \$400. and such sums additional as, in the discretion of the Court might be necessary for the support of Complainant.

SEVENTH: In view of the Chancellors holding that the private written agreement between Jim Walker and Whit Koonce was a part of the consideration to the Complainant, for execution of the Deeds, we think he erred in charging said parties with more than \$200. yearly after the death of Complainant's wife the said Cherry Koonce, on said written agreement.

EIGHTH: In view of the Chancellors holding^{ing} that the private written agreement between Jim Walker and Whit Koonce was part of the consideration to the Complainant for execution of said Deeds, (and which holding we think erroneous), we think it was further error not to have ordered a reference to ascertain what compensation would be reasonable for the support, board and maintenance of Complainant and his wife Cherry Koonce, and which the record showed had been furnished them by Jim Walker and Whit Koonce.

NINTH: We think the Chancellor erred in not holding:

The Deeds executed by Complainant, April 28th. 1920, vested fee simple title to the lands in Jim Walker and Whit Koonce, subject to a lien for the support of Solomon Koonce and his wife Cherry Koonce, during the remainder of their lives and proper burial (2) that the consideration for the conveyances was the agreement on the part of grantees to assume the entire indebtedness of Complainant to S.H. Burnett and support Complainant and his wife Cherry Koonce for the remainder of their lives and give them burial, retaining a lien on the land for security of said support (3) that said Whit Koonce and Jim Walker had complied with their agreement in that they had assumed said indebtedness and supported Complainant and his wife Cherry Koonce - given the said Cherry Koonce burial and was supporting Complainant at the present time, all of which was shown by the record (4) correction of any error in the description of the land in accordance with the prayer of the Cross Bill .

The action of the Chancellor and the Decree rendered as above set forth on the points enumerated is hereby assigned as error.

BRIEF.

With the permission of the Court we would like to call attention to a few points and matters by way of brief.

CONTRADICTIONS OF
COMPLAINANT,
SOLOMON KOONCE.

The theory upon which Complainant predicated his suits was, that the Deeds were procured from him by fraud and that he did not owe S.H.Burnett anything on April 28th. 1920, at the time the Deeds and Trust Deeds were executed.

Complainant avers this in all of his pleadings, bills and answer and testifies to it positively upon examination as a witness (Page 87 of Transcript). He goes further and says he never did owe S.H. Burnett anything, with the exception, possibly of some trifling sum.

In these statements he is flatly contradicted by S.H. Burnett, by the witness, O.G. Birmingham, by Jim Walker, by Annie Walker, a daughter of Complainant, by Ned Koonce, a son of Complainant, not to mention documentary evidence--registered Deeds of Trust--introduced.

The Deeds of Trust filed as Exhibits (pages 127--136 Tr.) clearly and beyond any question show that Complainant was indebted to Burnett and that said indebtedness was secured by Deeds of Trust on the very land in question.

In these Deeds of Trust, just referred to and executed by Solomon Koonce to secure notes to S.H. Burnett, we call attention to the fact that 100 acres of land is conveyed and that S.H. Burnett held a Mortgage on 100

after 1920

It will be noted from the Deeds of Trust filed as Exhibits to the Testimony of S.H. Burnett, that Complainant conveyed in the Mortgages 100 acres of land.

On this point S.H. Burnett testified (page 116 Tr.)

Q. What land was it Solomon Koonce conveyed in the mortgages you have just mentioned?

A. It was the 100 acre tract he owned at that time and included the tracts he later deeded to Whit Koonce and Jim Walker and also included a 5 Acre tract he gave his son Charlie Koonce, but it was all in one tract when he mortgaged it to me in 1904.

This witness, S.H. Burnett makes no further reference to this 5 Acre tract or when Solomon Koonce gave it to his son Charlie Koonce.

But the testimony of Solomon Koonce, the Complainant and his son Charlie Koonce clear up the point. The 5 acre tract was run off the same day and at the same time, (April 28th. 1920) as the 95 acre tract was surveyed and divided between Whit Koonce and Jim Walker.

On the point, the Complainant says (Page 92 Tr.)

Q. And on the same day you divided this land between Jim Walker and Whit Koonce you gave Charlie Koonce a 5 Acre parcel didn't you?

A. Yes sir.

And Charlie Koonce (page 114 Tr.) says on the point:

Q. At the same time they ran this line, they ran off a 5 acre tract which your father deeded you, didn't they?

A. Yes sir.

Q. Mr Burnett was still directing them how to run the line when they ran off your 5 Acre tract wasn't he?

A. Yes sir.

In connection with this 5 acre tract of land, we would like to call the Court's attention to these points: It is not claimed that Complainant did not have full possession of his mental faculties when he was having this 5 acre parcel of land run off, which was done at the same time and by the same parties, who ran the dividing line as to the balance of the land (i.e.) the 95 acres, divided between Whit Koonce and Jim Walker.

The witness Charlie Koonce, says on that very day, -at that very time his father, Solomon Koonce, was in bad condition physically and mentally -- --says his father had " NO RECOLLECTION" at that very time, but he makes no explanation why he permitted his parent in that condition to convey him- as a gift - a tract of land.

The appellant S.H. Burnett was not looked on as an officious intermeddler in directing the survey of the 5 acre tract.

And certainly if appellant were seeking to get possession of Complainants land by fraud, he would not have let this 5 acres escape, as he, at that very time had it covered by his mortgages.

We think he felt secure with the 95 acres and actually let Complainant convey that to his son Charlie, when as a matter of right he could have refused to surrender his rights to it as security under his mortgages.

We think this a circumstance to show Appellant, S.H. Burnett is not the grasping, mercenary fellow the pleading of Complainant would make him.

FUTHER CONTRADICTIONS OF COMPLAINANT, : Complainant denied having borrowed \$600. from the witness O.G. Birmingham, or having executed a Deed of Trust on this land (subject to the Deed of Trust then held by S.H. Burnett) (page 91 Tr.

But he is contradicted by the witness O.G. Birmingham (page 145 Tr.) and by the Deed of Trust made Exhibit to his testimony.

On this point, Complainant is also contradicted by his son Ike Koonce for whom it was said he borrowed the \$600. The witness Ike Koonce, admitted that his father did borrow the \$600. for his benefit, from the witness O.G. Birmingham and make the mortgage on this land (Page 110 Tr.)

Complainant denied having purchased supplies from S.H. Burnett or having borrowed money from him along, but on this point he is not only contradicted by the Appellant, S.H. Burnett but he is contradicted by Ned Koonce, a son of Complainants, who says on the point: Page 152, Tr:

This witness Ned Koonce, 56 years of age, testifies in no uncertain terms as to the financial relation Mr Burnett bore to his father.

Q. Do you know anything about what your father owed Mr Birmingham ?

A. No sir. I didnt know exactly, but I know Pa. owed Mr Burnett.

Q. What did he owe Mr Burnett for, if you know ?

A. Well first one thing and another. He got money from him and bought things from him-- corn and hay and things. Whenever I wanted any money I went to him for it and if he didnt have it he went to Mr Burnett and got it.

Q. Most all of his children did that way didnt they Ned ?

A. Pretty much sir.

COMPLAINANT HAVING EVER MENTIONED the matter of dividing this land to Jim Walker, or to any one else (page 88 Tr.) or any of his children.

Q. Did you ever speak to any of your children about making these Deeds to Whit and Jim Walker ?

A. No sir. Burnett is the only one who ever spoke to me about it.

On this point Ned Koonce says (page 152 Tr.)

Q. Did you know of it at the time your father divided the tract of land between Jim Walker and your brother Whit Koonce in April 1920 ?

A. Yes sir I knew of it.

Q. Did your father tell you about it ?

A. Yes sir he talked to me about it---we all knew about it.

Q. What did he say about it ---your father Sol Koonce ?

A. He said Jim Walker and Whit were going to pay what he owed Mr Burnett and he was going to deed them the land, they all knew about it.

We believe this to be the correct version of the matter. That all of Complainants children knew and were consulted about his intentions.

Again, Complainant denies having talked to Jim Walker about it (page 94 Tr.)

Q. Didnt you make a trip up to Carroll County--McKenzie-- where Jim Walker and your daughter Annie Walker were living, shortly before you divided the land and tell them you wanted to divide the land as you later did ?

A. I went up there, but I dont remember saying anything to them about dividing the land.

On this point Complainant is contradicted by both Jim Walker and his wife, Annie Walker. Jim Walker says (Page 37 Tr.)

Q. Did your father in law and his wife Cherry Koonce visit

(Jim Walkers testimony Con)

you and your wife at McKenzie shortly, before this land was divided between you and Whit Koonce ?

A. Yes sir they came and stayed with us ,something over a month.

Q. Did Sol Koonce say anything to you about the proposed division at that time---during his visit ?

A. Yes sir--that was mainly his talk. He talked about it a good deal. He wanted us to move back down here, so he could live with us. Said he had given his other children the other 100 acres and if we would pay his indebtedness to Mr Burnett he would divide the land between me and Whit Koonce.

On this point Annie Walker, wife of Jim Walker and daughter of Complainant says (Page 141 Tr.)

A. Yes sir they were up there (McKenzie) to see us--stayed something like 6 weeks with us.

Q. What if, anything did your father Solomon Koonce say about the matter of dividing this land while he was up there?

A. Well he said they were getting too old to look after the place and wanted us to come down here---and said they would divide the land if Jim and Whit would pay what he owed Mr Burnett. Said all they wanted was a living out of the land and would be willing to divide it, if we would pay off his indebtedness to Mr Burnett and support him out of the land.

Q. Did he talk little or much about it?

A. Yes sir he talked about it a right smart. He had given the other children 100 acres of land and he wanted us to move to the place which he was going to deed to Jim.

In corroboration of the truthfulness of the statements of Jim Walker and his wife, we point out that Jim Walker and his wife did move to the place deeded Jim Walker and Complainant and his wife Cherry Koonce immediately moved into the house with them and remained with them until Cherry Koonce died, 20 months thereafter and Complainant stayed 7 months longer.

CORRECT VERSION OF MATTER.

We repeat we believe the witness Ned Koonce gave the correct version of the matter when he says "We all knew about it".

It is utterly unreasonable to suppose that Whit Koonce and Jim Walker would have assumed an encumbrance that did not exist.

As proof of the fact that the matter was not gone into hurriedly Jim Walker refused to assume any part of the balance due on the \$600. note, executed by Complainant when he borrowed the money for Ike Koonce (Page 137 Tr.) They evidently went over the entire indebtedness at

time as S.H. Burnett testified (Page 120 Tr.)

"We made the calculations and figures at the time and all parties thoroughly understood the matter and were satisfied"

FUTHER CONTRADICTIONS OF COMPLAINANT: It is not necessary to search the Record for points on which witnesses contradict Complainant, he contradicts himself.

In his original bill (Page 50 Tr.) Complainant says:

"That before they got him to sign said Deeds he collected from said Whit Koonce and Jim Walker about \$175. per year rent on each tract of land, but that they have not paid him a cent of rent since "

But in his ANSWER to the CROSS BILL, COMPLAINANT says: (Page 35 Tr.)

" Complainant says that WHIT KOONCE always paid his rent promptly and any statement to the contrary is untrue. BOTH BEFORE AND SINCE THE PRETENDED DEEDS OF APRIL 28th. 1920, WERE PRETENDED TO BE EXECUTED"

We do not know that it can be found in Gibsons Chancery Practise, but it is a well known maxim that " Liars should have good memory's"

It is insisted on behalf of Complainant that age has greatly impaired his memory. It certainly has not improved his veracity.

Contradictions on the witness stand might be excused or explained, but when Complainant has able counsel to direct the drafting of his pleadings, we hardly see what explanation can be made of such glaring contradictions.

WHIT KOONCE, contradicts the statement contained in the original bill above referred to (Page 50 Tr.) in his answer to the Cross bill and says:

"He denies that he is now or ever was in possession of the land in controversy; on the contrary he states that his father never give him possession etc of the land but he Solomon Koonce retained absolute control and possession of same after the 28th. of April 1920, as he had always done and this Defendant continued TO PAY RENT AS HE ALWAYS HAD DONE FOR THE USE OF THE PLACE"

These answers to the Cross bill being filed by Complainant and Whit Koonce at the same times, accounts for the reason they agreed on the rent question in the answers.

BUT the next time Whit Koonce goes on record regarding the rent he contradicts what he and Complainant say in their ANSWERS.

Whit Koonce says (Page 96 Tr.)

Q. Did he ever turn you over the tract of land deeded to you ?

A. No.

Q. Have you ever paid him any RENT on the land deeded you ?

A. NO.

When the statements of Complainant both in his pleadings and those made on the stand, so completely devour each other, is anything he says entitled to any credence ?

Counsel, would have us believe that Complainant's memory is very bad--that his mind is failing. Yet he would have us understand that Complainant can remember how Burnett was trying to prevail on him to make the conveyances etc.

We call attention to the testimony of Complainant (Page 114 Tr.) which we think shows very clearly that he understood what he was doing and had his reasons for making these conveyances. And be it said to his credit that he was to some extent impelled by a sense of justice to give something to Whit Koonce, to whom he had given no land and to his son in law, Jim Walker, whose wife had received none of his estate.

Q. Didn't you tell Whit Koonce and Jim Walker you would convey them this land, if they would assume and pay your indebtedness to S.H. Burnett ?

A. Not that I remember.

Q. Well why did you make the Deeds to them ?

A. I had given 4 of my children the 100 acre tract joining this land -- 25 acres apiece and they agreed to pay off the mortgage against it, so I gave this land to Whit and Jim Walker.

Q. What Mortgage ?

A. A mortgage on the 100 acre tract I divided between Charlie and Ike and Ned Koonce and Tom Postons wife--she is my daughter.

Q. How much was that Mortgage ?

A. \$400.

Q. When was that Mortgage made ?

A. I dont remember.

Q. You made the mortgage didnt you ?

A. Yes sir.

Q Did you pay it off ?

A. No sir.

Q. So, that land you gave Charlie, Ike and Ned Koonce and Tom Postons wife had a Mortgage on it when you conveyed it to them ?

A. Yes sir.

~~Q. Yes.~~

Q. Now this 100 acres you have just mentioned was conveyed to Charlie, Ike and Ned and Tom Postons wife before you divided this last tract between Whit Koonce and Jim Walker wasnt it ?

A. Yes sir.

Q And on the same day you divided this land between Jim Walker and Whit Koonce, you gave Charlie Koonce a 5 acre parcel didnt you ?

A. Yes sir.

We think the above clearly shows, that Complainant fully understood what he was doing.

He shows another thing. It shows that he was accustomed to make mortgages on his land and thereafter convey it to his children, with the encumbrance on it. That when he conveyed this land to Whit Koonce and Jim Walker, with the understanding that they assume payment of the encumbrance, it was not the first time he had done the same thing.

It shows also that Complainant was not able to make a living and get along without making mortgages on his land WHEN HE OWNED 200 Acres --despite what Complainant and his boys and witnesses, Ike and Whit and Charlie Koonce say about the fine crops, he raised.

WRITTEN AGREEMENT EXECUTED
BY
WHIT KOONCE AND JIM WALKER.

The Decree of the Chancellor amounts to this:

That as consideration to the Complainant for making the Deeds to them, Jim Walker and Whit Koonce agreed:

- (1) To assume payment of Complainants indebtedness to S.H. Burnett
- (2) To let Complainant retain a life estate in the lands, for himself and wife Cherry Koonce,
- (3) Whit Koonce and Jim Walker agreed futher to support Complainant and his wife Cherry Koonce the remainder of their lives and give them burial,
- (4) And in addition to the foregoing, Whit Koonce and Jim Walker agreed to pay Complainant and his wife Cherry Koonce, (or the longest liver of the two) \$400. yearly the remainder of their lives.

We do not think the Record in this case will warrant this decree,.

We insist the consideration for making the conveyances, was the following:

- (1) Jim Walker and Whit Koonce agreed to assume Complainants indebtedness to S.H. Burnett,
- (2) They agreed to support Complainant and his wife during their lives and give them burial,
- (3) They agreed that Complainant should retain a lien on the lands conveyed to secure their support.

Complainant says in his original bill (page 6 Tr.) that Burnett told him " He and his wife Cherry was to stay with his son Whit half of the time and his daughter Annie, - Walkers wife the other half of the time, that they would charge no board and it would be their home "

We insist that Whit Koonce and Jim Walker have complied with their agreement to the Complainant. (1) They have assumed payment of his indebtedness to Burnett (2) the record shows Complainant has lived with and been supported by them since the execution of the Deeds (3) it is frankly admitted that he has a lien on the lands for his support.

THE ONLY WAY BY WHICH WE CAN DETERMINE WHAT THE CONSIDERATION WAS TO COMPLAINANT FOR MAKING THE DEEDS TO JIM WALKER AND WHIT KOONCE, IS TO EXAMINE THE EVIDENCE IN THE CASE, ON THAT POINT.

We cannot determine it from the pleadings. The wholesale charges of fraud made by Complainant were not proven. Complainants pleadings are so full of contradictions that it would be unsafe to attempt to rely on them as EVIDENCE, if it were good procedure to do so.

We respectfully call attention to the evidence on the point of CONSIDERATION and the point raised as to this WRITTEN AGREEMENT BETWEEN WHIT KOONCE AND JIM WALKER.

There are only four(4) witnesses in the Record who were present when the Deeds were executed, April 28th 1920.

These four are: Complainant, Solomon Koonce(2) Whit Koonce (3) Jim Walker and (4) S.H. Burnett.

Lets examine the evidence and see what they say:

Jim Walker says(Page 139Tr.)

Q. What was the agreement which you and Whit Koonce signed as to payment of \$400. a year to Sol Koonce and his wife Cherry Koonce for their support ?

A. Well the understanding was that we were to live on this land and support them and to fix it sure, we were to pay them \$400. a year, if we didnt support them and I wanted something to show that Whit Koonce was bound equal with me. I am the one that named this agreement and Mr Burnett wrote it up there while Mr Neal was drawing the Deeds. Sol Koonce didnt have it done.

What does the Complainant, Solomon Koonce say as to this ?

NOT ONE WORD. Not one word does he mention concerning this written agreement. He heard the statement of the witness Jim Walker and did not even deny it by way of rebuttal. If this statement had not been true, he could have denied it.

It is evident from the pleadings and Record that Whit Koonce is "playing to the hand" of the Complainant in every way possible.

The mortgage on his land was foreclosed in 1924, after Whit Koonce failed not only to make no payment on the principal, but as he admitted failed to pay the interest. Although he did pay interest for 2 years.

Whit Koonce was present when the Deeds were draw--he signed the written agreement, and was present when it was drawn up, SO WHAT DOES HE SAY AS TO THE WRITTEN AGREEMENT ?

NOT ONE WORD. Neither Whit nor Sol Koonce denied that what Jim Walker said about it, was true.

The other witness was S.H.Burnett and what does he say :

He testified as follows:

- Q. What do you know about this written agreement between Jim Walker and Whit Koonce, in which they agreed to pay Solomon Koonce and Cherry Koonce \$400. a year for their support ?
- A. I never heard of it until they came to draw up the Deeds. At that time, I think Jim Walker is the one who suggested it - I wrote for them right there while Squire Neal was drawing these other papers. Jim Walker wanted something to show that Whit Koonce was to support Sol and Cherry Koonce the same as he (Jim)-that is half of the time. They estimated the support to be \$400. a year for the two--for Uncle Sol and Aunt Cherry -and I wrote it as they told me insubstance. As far as the agreement was concerned they were to support and take care of Sol Koonce and his wife OR PAY THEM \$400. a year. I had nothing to do with it, futher than to write it as they wanted it, but that is what they agreed on (Page 122 Tr.)

We earnestly call the attention of THIS Court to the language of the witnesses; Jim Walker says, WE WERE TO PAY THEM \$400. IF WE DIDNT SUPPORT THEM.

The witness Burnett says: They were to support and take care of Sol Koonce and his wife, OR PAY THEM \$400. A YEAR.

Now the two statements above are the sole statements regarding the execution or purpose of this written agreement.

Whit Koonce was a party to the writing, and he didnt deny that it was an agreement solely between himself and Jim Walker----

Whit Koonce was present when the agreement was made--he was present when the Deeds were made, and he does not say the written agreement, on which the Chancellor based the \$2706. judgment was a consideration for the execution of the Deeds.

Whit Koonce does not deny that what Jim Walker and S.H.Burnett testified about it was true.

Solomon KOONCE DOES NOT EVEN MENTION IT. THE RECORD IS BARE OF FUTHER STATEMENT CONCERNING ITS EXECUTION OR THE CONSIDERATION FOR EXECUTION OF THE DEEDS.

None of Complainants witnesses undertake to say what the consideration for execution of the Deeds was. We have the statements of Complainant on the witness stand as to why he made the Deeds.

Jim Walker and S.H. Burnett testify that the agreement was that Whit Koonce and Jim Walker were to support and take care of Complainant and his wife OR (not and) pay them \$400.

And we insist the Record shows they have supported Complainant and his wife Cherry Koonce and given her burial.

BOARD AND USE OF LAND.

The record shows beyond any question that Complainant and his wife have been supported by Jim Walker and Whit Koonce since the execution of the Deeds. It shows that in January 1921, Complainant and his wife moved into the house with Jim Walker and Annie Walker--- that Cherry Koonce lived with them for a period of 20 months-- that she was helpless much of the time. That Complainant lived with Jim Walker 7 months longer and then went to Whit Koonces. And has been there since.

The record shows that while with Jim Walker, he purchased and spent for them, something like \$181. in the way of clothes and medical attention etc. This is not denied. Complainant says Jim Walker drove him away from his home. It seems remarkable to us that Complainant can remember this. The witness Ned Koonce, says his father and mother were well treated at Jim Walkers--says they had plenty to eat--plenty of clothes--and were made comfortable.

Complainant says himself, that Whit Koonce has been kind to him and treated him well. Whether this is true or not we have no way of knowing, but to say the least Complainant makes the statement himself.

To hold that Complainant reserved a life estate in the lands-- and that the grantees, Whit Koonce and Jim Walker agreed to support Complainant and pay him \$400. a year too, strikes us as exceedingly unjust in the face of this record.

ERROR IN DESCRIPTION.

It is insisted that because the Deeds do not give the County and State in which the lands are located and because the call in the Deed to Whit Koonce, reads "North 216 rods to the Beginning" instead of "South 216 rods to the beginning", that the same is fatally defective and should be set aside.

The rule that "Where an instrument is so drawn that upon its face, it refers necessarily to some existing tract of land, and its terms can be applied to that one tract only, parol evidence may be employed to show where the tract so mentioned is located" is so well established that we hardly think it necessary to cite authorities.

Sheid vs Stamps, 2 Sneed, 172. Helms vs Alexander 10 Hump. 44.
Huddleson vs Garrett 3 Hump 629. Brigance vs Erwin 1 Swan 375
etc.

The record shows that parol evidence was introduced establishing beyond question the location of the lands in question; that the correct call, in the Deed to Whit Koonce should be thence "

South 216 rods to the beginning" and all of which was set out in the testimony of S.H. Burnett (page 123 Tr.)

In Conclusion we respectfully ask the Court to modify the Decree by setting aside the judgment of \$2706. against the parties and land--that fee simple title be declared vested in Jim Walker and S.H. Burnett, to their respective tracts of land--- and that a lien be declared thereon for the support of Solomon Koonce and his burial expenses etc.

In this connection we do not presume to say what would be a reasonable support for Complainant. Under the Deeds and by his agreement established with grantees, we do not think he would be forced to live with the grantees; that he could live where he pleased, and the lands would be bound for his reasonable support and if he could not agree with the parties as to this he could subject the lands to it by proper action.

Respectfully submitted.

Jerman - Jerman
for Appellant

1867

卷之六

F. by Complaint

JAN 12 1925

The record shows that the defendant Burnett was in a financial straight at the date ~~this~~ that he had the old man to make these deeds.

In addition had his land covered with an additional mortgage for \$ 4300.00 borrowed money, and owed other indebtedness.

He had the old negro to go his security to bank at jackson
for six or eight hundred dollars.

He borried \$ 200.00 from compl-inant and has not even *give*
a note for ~~and never paid a cent back.~~

borried for Ike, and now charges the old man sweet
but I K + Cheryl both swear that was said

The nearest approach to this case, that I can find in Tenn. for fraud and rascality is the case of King VS. Gornon reported in 6 Yeager P. 74. and old negro woman who was defrauded out of her home in Nashville

Gorhon reported in 6 Yeager P. 74. and old negro woman

who was defrauded out of her home in Nashville

It has been held by numerous authorities that where a grantor conveys land, and the consideration is an agreement by the grantee to support, ~~the~~* and care for the grantor during the remainder of his life and the grantee neglects or refuses to to comply with the contract, the grantor may in equity, have a decree rescinding the contract, setting aside the deed, ~~reinvesting~~ reinvesting ~~in~~**th in the grantor with the title to the real estate"

4, vol. R.C.C. p 509 sec 23

This fits the cases .

It is not insisted by any one in this record that the defendants Whit Koonce or Jim Walker has complied with the contract that Burnett wrote for them to sign to pay complainant \$ 400.00 per year for support, which was the consideration for the old man to make them a deed

Where confidential relations exist as in the case between Complainant and the defendant Burnett, the fact that one of the parties was in a state of mental and physical weakness and in his second childhood at the time, makes it proper for a court of equity to view such contract with the strictness scrutiny and before it would be allowed to stand, requires the clearest and most satisfactory evidence to be adduced that at the time of the transaction, no advantage whatever was taken either of the confidential relation existing or of the weakness and frailty of the party from whom the benefit was received.

4, Bax P. 34.

This record conclusively ~~shows~~ ^{shows} confidential relations. ~~the old man~~ and in his second childhood and that Burnett was well acquainted with the fact.

116 Cases Cason vs Cason is in point

THERE WAS NO DELIVERY OF THE DEED AS REQUIRED
TO MAKE THE TRANSFER COMPLETE.

I. Head 576.

3 Lea. 576.

10 Lea. 315.

In these cases there is no evidence there is no evidence
that the complainant ever delivered the deeds to the
defendants. Burnett took charge and complainant had nothing
to do with the deeds.

7. Picl P. 150.

These deeds were inoperative for the want of delivery
and is in the same class of that in 24th Pick. P398.

Also 9th Pick 266.

All contract procured by fraud are voidable at the option
of defrauded party.

It is elementary law, of universal application that fraud
renders all contracts voidable, ~~***indefinite***~~ ab initio at
the option of the defrauded party 17 Gates 532.

14 Pic. 474.

Where a person claims property by deed from one greatly
enfeebled in body and mind the burden of proof is on him to
show that he was free from fault, or that the donor had the
benefit of a full consultation with some disinterested
third person.

13 Lea. 189.

The deed shows on their face that it is a gift and therefore
it must clearly appear that the donor had relinquished his
control and the donee has required all dominion over the property
over the property.

A.E.. Vol 4. P 1024 - 34 - 49.

The burden is on the defendant.

The bill charges that the deeds are null and void both in law and in fact, as the face of the same shows.

Burnett admits it was he, who suggested for the old man to make these deeds, and the old man says Burnett is the only person that ever spoke to him about it

In the case of Stephens VS.)zbourne 107 Tenn 572. where an old illiterate negro was defrauded out of his property, the court cancel the deed.

The \$ 400.00 contract that Whit and Jim signed to support & C. was the consideration upon which the old man made the deeds with the further statement by Burnett at the time him and his wife could have all the money they wanted, and if Jim and Whit did do this then the land would be his.

Whit and Jim and every body else in the record says they have not complied with their contract and will not do so, Therefore we are intitled to a cancellation and for rents III Tenn 737.

This question is fully discussed in 4 vol R.L.C.
P 502 section 15 and 16



Assignment of Error
FROM CHANCERY COURT AT ALABAMA TRIED NOVEMBER TERM 1925.

FILED
JAN 11 1925

J. E. SPRINGBETT, Clerk

Two cases, by consent consolidated and tried together on the same facts; on oral testimony before the Court.

1624 Solomon Koonce

VS.

Whit Koonce S.H. Burnett and S.A. Booth trustee.

1625 Solamon Koonce

VS.

S.H. Burnett, Jim Walker and S.A. Booth Trustee.

STATEMENT OF THE CASE FOR COMPLAINT SCLOMENT KOONCE.

Complainant who is an old colored man 100 Years old; *testate*
filed these two bills December 1924 to set aside two
deeds purported to have been executed on the 28th of April
1920 to two tracks of land in crocket county each contain-
ing 47 Acres and valued at \$4,000.00 each

Isaac Koonce was a slave holder, and had no children; after
the negras was free he gave the complainant 250 acres of
fine timber and farming lands; adjoining a track he had
prevelously given his neice who married T.J. Burnett,
Father of the defendent Sam H2 Burnett.

the
Complainant set, on said land cleared it raised a family of
6 children 4 boys and 2 girls and as they become of age
or married he settled them on this land and continued this
until he had reduced his acreage to 95.

Assignment of error and brief for Complainant.

~~continued this procedure untill he reduced his acreage to 25 acres.~~

The defendant Whit Koonce , does not appeal.

He is 49 years old and has never left home ,being the youngest child remained at home to take care of his mother and father, although married and has three children.

The daughter Annie married the defendant Jim Walker in 1905 the complainant settle them on the farm, but made them no deed and required them to pay rent as he did the defendant Whit Koonce.

At this time 1905, the complainant was 80 years old, had become very feeble in mind and body, not able to do any work; but his rents , with his other income was ample to comfortably support him and wife.

After his old Masters death, complainant confided in and relied on J.T. Burnett father of the defendant Sam H. Burnett in all of his business matters; but he died about 17 years ago; Naturally complainant went to his son , the defendant Sam H. Burnett for all advice and counsel and trusted him as his legal advisor. They lived near each other and the families were as intimate as it was usual and customary for white and colored people to be under like circumstance.

Complainant gave down , physically and mentally and has grown worse gradually ever since. 1905

He had one of the best farms in the country; boys all good workers, made good crops , produce a surplus of farm products for market every year; had brood mares and raised colts, hogs and cattle for market.

He was economical, made no investments, gave his children no money, created only one debt and that for a Wheat binder in 1887 to Esq Robinson for \$ 800.00. which was paid by the boys when he made them a deed to their land.

No intimation that complainant owed any other person in 1920 when The defendant Burnett appeared on the scene of action.

IT IS SHOWN BY ALL PARTIES: ADMITED BY DEFENDANT BURNETT; THAT THE COMPLAINANT GAVE DOWN ;PHYSICALLY AND MENTALLY IN 1904 AND 1905. AND NOT ABLE TO DO ANY THING SINCE.

IT WAS AT THAT TIME THAT BURNETT HAD HIS FIRST MORGAGE
R
RECORDED ON THE OLD MAN LAND TO SECURE A DEBT OF \$ 495.00.

DEC. 1906HE HAD THE SECOND RECORDED ON THIS SAME LAND TO SECURE A DEBT OF \$ 1100.00.

DEC. 1912;HE HAD A NOTHER MORGAGE RECORDED TO SECURE A DEBT OF \$1500.00. DUE THE 15th NOV. 1913 ALL ON THIS SAME LAND.

THE OLD MAN CONTINUED TO LIVE;AND BURNETT RESTED UNTILL 1920 AND HE MADE HIS FINAL GRAB;

IN EARLY SPRING 1920THE OLD MAN HAD A HARD SPELL OF SICKNESS FLUE AND FEVER;ALL THOUGHT HE WOULD DIE AND IN TWO OR THREE WEEKS AFTER HE BEGAN TO RECOVER;AND BEFORE HE WAS ABLE TO WALK ABOUT THE HOUSE THE DEFENDANT BURNETT WAS SEEN BY THE FAMILY OUT IN THE FEILD FIXING TO SURVEY THE LAND.

NONE OF THE KOONCE FAMILY HAD ANY KNOWLEDGE THAT THEY WERE GOING TO BE THERE.

Then defendant Whit Koonce went out there to see what they were going to do. Burnett told him to go and hitch the horse to the buggy and bring the old man out there as he was not able to walk.

Burnett ordered the surveyor to divide the 95 acres in to two tracts and told him where to run the lines,directed and supervised the whole matter.

Whit Koonce who lived in the house with his father; Charly; Ike; Tom Poston and A.P. Moore sons and sons in law, matured and educated men living on same farm near the old man, all on good terms with each other and their father, had no knowledge of Burnett and the surveyor come in, or for what purpose they come for, and as they appeared on the scene of action after they discovered them out there, not even then, did Burnett intimate what he was going to do; they all swear that.

After they got through running the lines: Burnett told the defendant Whit Koonce to get ready and carry his wife and the old man to Maury City to Esq: Neals office to have some writing done, but did not tell what kind of writing and he took the surveyor and went on to his house for dinner.

When the defendant Whit Koonce got to Neals office, Burnett told Neal that he wanted him to write two deeds from the old man Solomon to Whit and Jim Walker for Uncle Sol and Aunt Cherry to sign; Neal did so, and affixed his seal although Aunt Cherry was not there and so feeble she could not be carried? Burnett sign their names to the deed and then wrote his name as witness to their mark. See the original deed attached;

Then defendant Burnett said to Whit, the defendant, the old man owes me a large amount of money and I have a mortgage on this land to secure it; but I have cut the debt into; and put \$ 2504.00 on your tract and \$ 1973.00. On the tract that Jim Walker is getting and you and Jim will have to give me a mortgage on your respective tract to secure the same and I will give you all as long time as you want to pay it and then the land will be yours.

Then Burnett directed Esq: Neal to write the mortgages for Whit and Jim to sign.

At this time Burnett was oweing the bank of Alamo over \$4,000.00 in figures and endorsed these two notes to the bank in part payment of his debt.

In May 1924 Burnett had S.A. Booth the trustee to sell the Whitt Koonce track and Burnett bid it in and Booth made him a deed. Burnett immediately commenced to take steps to dispossessed the old man and Whitt and would have done so but, for the filing of this injunction bill.

Complainant filed these two bills charging that at the time to wit; the 28th of April 1920 when the alledge deeds were prtended to be executed that he was very old feble sick and imbicle and incopasitated to contract and prayed for said deeds to be canceled .

And further charging that the defendent Burnett by false and fraudlence reputations indused him to execute said deeds for his own personal benefit that he did not owe said Burnett any thing that said deeds were void in law and in facts that there were no consideration past and for general relief.

Judgements pro confesso was entered against the defendent Whit Koonce other defendents answering in a weak and evasive manner to some parts of the bill and confession, minus avoidance as to other material charges..

At the hearing the learned chancellor decreed that the complainant was in copassitated to contract at the time the deeds were made and rendered a money decree in favor of complainant for \$2,706.81 and ordered \$500.00 of it to be paid in in 3 days and the remainder to be paid by 1st day of Jan 1926 and declared a lein on the land to secure the same.

The chancellor vested the remainder intrest of said land in

Based on a written contract made by Sam & Whitt the day the deed was made. Rep. 10

the defendent Whitt Koonce and Jim Walker and the legal title of the whit Koonce track in the defendent S.H.Burnett by virtue of the deed from S.A.Booth trustee to him on the 5th of May 1924

Complanant appealed from so much and such parts of the decree as vested the remainder intrest in the defendent Whit Koonce and Jim Walker and the legal title in the defendent s.H.Burnett to the Whitt Koonce track and also because he failed to set aside the deeds made by the complanant to the defendence Whitt Koonce and Jim Walker on the 28th day of April 1920 and award rents for the Walker track since 1920

Complanant insist that the alledge indebitness by defendant Burnett from complanat to him his falts and fictitious and that said mortgages falts and fraudulance that he had no knowledge of them .

ASSIGNMENT OF ERRORS BY COMPLAIANT SOLOMON KOONCE

1.

Because the learned chancellor did not set asside the deed made by complaiant on the 28th of April 1920 to the defendents Jim Walker & Whit Koonce respectively and a ward rents on the walker track for the years 1920, 1921, 1922, 1923, 1924 and 1925. on the ground that the complaiant was Imbicile and incapasitated .

2.

Because the learned Chancellor vested the remainder intrest of said two tracks of land in the defendents Whit Koonce and Jim Walker .

3.

Because the learne~~d~~ Chancellor vested the legal title of the Whit Koonce track in the defendent Barnett by virtue of his deed from the Trustee S.A.Booth on the 5th of May 1924

4.

That the deeds on there face is void in fact and in law; because they do not show what State or County land is in; and no land in in circle in the call set out in said deed .

5.

Because there was no delivery of the deed to Whit Koonce nor Jim Walker by the complaiant .

6.

Because no valuable consideration was past from the defende-
nt to the complaiant for said land.

There is no escape from the conclusion that the alledge indebtedness due from complaniant to the defendent Burnett is fictitious and that the defendent Burnett resorted to false and fraudulent and faltse reputation and schemes to get the two pretended deeds from Solomen Koonce to the defendence Whit Koonce and Jim Walker on the 28th of April 1920. for his personal gain, to substain this contention the Court is respectfully refered to the testimoney of the followering witnesses.

See the testimoney of Solomen Koonce page 98.

Testimoney of Ike Koonce Rec-p. 108

Testimoney of Charlie Koonce Rec-p 112

Testimoney of A.P. Moore Rec-p 103

Testimoney of Ada Moore Rec-p 105-6

*Also
Whitt Koonce
see Rec p 194-8
Mable Koonce
Rec p 101-2*

It is shown by seven witness To-Witt;

Charlie Koonce, Ike Koonce, Mable Koonce, Whitt Koonce, A.P. Moore, That the complaniant always made good crops always had surplus crops for sale; brude mares to raise colts to sell, also hogs and yearlings every year, and his cotton crop would run from 5 to 15 bales per year..

there is not an intermition in this entire record that the complaniant, ^{owed} to Burnett or any one else in 1904 when he broke down mentaly and fisically.

At this point the defendent Burnett who was the complaniant's confidential friend and legal adviser apeared on the seen of action and in December had recorded a deed of trust on the land in controversy to secure a debt \$595.00.

On the 15th day of December 1906 he had another mortgage recorded for \$1.100.00 due in 1907.

In 1912 he had the third mortgage recorded on the same land to secure a debt of \$1.500.00 due in November 1913.

THE OLD MAN KEPT LIVING AND THE DEFENDENT BURNETT RESTED ON HIS ORES UNTIL SPRING OF 1920 WHEN THE OLD MAN HAD A HARD SPELL OF SICKNESS, FLUE AND FEVER.

In early spring 1920 the old man had a serious spell of sickness every body thought he was going to die sent for all the children but he rallied and when he got so he could set up and walk about the house the defendent Burnett sent for a survayer had the 95 acre track of land divided in two lots and when finished running the lines he told the defenden Whit Koonce to hitch the horse to the buggy take his wife and the old man to Murry City for Square Neel to do some writing Burnett debt by this time according to his statement had increased from \$1.500.00 to over \$4.000.00 . and when they got to Neals office at Murry City Burnett told Neal he wanted him to write two deeds one from Sol Koonce to Whitt Koonce and the other from Sol Koonce to Jim Walker and give him directions how to write same and when he completed the deeds the defendent Burnett signed Solomen Koonce and Cherry Koonce name to the deeds and then he wrote his own name as a witness to there signature as will be seen from the original deed attached to and made a part of the bill of exceptions.

Then the defendent Burnett told the defendent Whitt Koonce that the old man owed him a large amount of money and that he had a mortgage on this land to secure it and that he and Jim would have to give him a mortgage on there respective tracks to secure ~~his debt~~ ^{his debt} and that whitt Part would be \$2504.00 and

Jims part would be \$1.973.00 making a total of \$4.477.00
 telling them at the time that he would give them all the time
 they wanted to pay it and then the land would be theres.

He took those two notes and went to the bank of Alamo to
 which he was indebted to over \$4.000.00 and indorsed the
 same to the bank in payment of his indebitness as Burnett
 admits in his own testimoney, at this very time the defendent
 Burnett had his land covered with a mortgage for \$4.300.00
 of borrowed money and much more money borrowed not covered
 in the mortgage .

In addition complaniant charges that he had Two Hundred
 dollars on deposit in the bank and when Burnett found it out
 he came to borrow it and complaniant refused him the first
 time but on the second trip he agreed to let him have it and
 Burnett said I have no paper with me now to write the note
 for it but I will do so soon but always had some excuse for
 not doing so when the complaniant would ask him about it
 and has never given him the note not paid a cent of it back
 and the defendent Burnett does not denie this charge neither
 in his answer nor testimoney.

In answer to a question by the court he admitted the \$1.500.00
 note was out of date being about 7 years old when he included
 it in the pretended settlement in 1920 .

On cross examination of the defendent Burnett he was asked the
 followering Question,

Q. What was the \$1.500.00 note given for .

A. Borrowed Money, on, a, wheat, and provisions I furnished him.

Q. Have you any book or memorandum that was made at the time
 you furnished him.

A. NO.

ORAL TESTIMONY BEFORE THE CHANCELLOR IN OPEN COURT.

SOLOMAN KOONCE.

First Witness, complainant Soloman Koonce.

Q. Uncle Sol what is your age?

A. I dont know exactly-about one hundred years old.

Q. Where did you get the land that is involved in this law suit?

A. My old master gave me 250 acres.

Q. How long have you known defendant Burnett?

A. All of his life.

Q. Who is Jim Walker?

A. He married my daughter Annie.

Q. Did you know S.H.Burnett's father?

A. Yes.

Q. Can you read or write?

A. No.

Q. Did Aunt Cherry, your wife, have any education?

A. No.

Q. Is the land that Jim Walker and Whit Koonce been cultivating a part of the land your old master gave you?

A. Yes.

Q. How long did you know J.T.Burnett, father of the defendant Sam Burnett?

A. All of his life.

Q. What kind of business did you follow?

A. Just farmed-- couldn't do anything else.

Q. Did you ever owe S.H.Burnett any money?

A. No sir, if I ever did it was a few dollars a long time ago,

Q. Did you ever borrow any money from him?

A. No.

Q. State whether you ever gave him a note?

A. No.

Q. State whether you ever gave Burnett a mortgage on this land or any other land?

A. Why no--didnt have to do it.

Q. How come you to make the deeds of Whit Koonce and Jim Walker to the land involved in this suit?

A. Burnett told me to do that--he talked to me often about it.

Q. Who suggested dividing the land giving Whit part and Annie a part?

A. Burnett did that.

Q. Who suggested and arranged the matters having the land run off and divided?

A. I don'd know unless Burnett did.

Q. Was Burnett your friend and adviser?

A. Yes, I reckon you would call hin that--he is the only one that ever talked to me about it.

Q. Are you positive that you never borrowed any money from Burnett?

A. I know I did not.

Q. Are you positive that you never gave him a mortgage for money or anything else?

A. No, if I did I didn't know it.

Q. How long has it been since you were able to do any work?

A. A long time.

Q. What is your physical condition--are you strong or weak?

A. I feel mighty bad.

Q. Did you ever speak to any of your children about making these deeds to Whit and Jim Walker?

A. No. Burnett is the only one that ever spoke to me about it.

Q. State whether you have ever give up the place where you are living to Whit?

A. No it is my place and not his.

Q. Did you ever give Jim Walker a deed to his place?

A. No, When Burnett was talking to me to do this he said give it to Annie. Jim's name was not called.

Q. Did you ever go to Maury City and have the deeds fixed?

A. No, if I did I have no recollection of it.

Q. How is your recollection?

A. Not good--I cant remember nothing much.

Q. What did Mr. Burnett tell you about the land?

A. He said if I would do like he said I would not have to work any more, that Jim and Whit would pay me and my wife all the money we needed.

Q. Did you know that the surveyor was coming to run the land off?

A. No.

Q. Did you send for him?

A. No.

Q. Did you know who he was?

A. No.

Q. State whether Burnett came to see you often?

A. Yes, every few weeks I would see him.

Q. Did you ever buy a binder and mower from Frank Robertson?

A. I don't know.

Q. Did you ever own one?

A. Yes, but I don't know who I got it from.

Q. I ask you if you didn't buy a binder and mower from old Squire Robertson for \$800.00 and give a mortgage on your land for the payment of it?

A. If I did I don't remember it. I had a mower and binder.

Q. State whether Mr. Burnett was anxious for you to turn the land over to Whit and Jim Walker?

A. He said he wanted me to do it. He said if I said so he would fix it all right and they would support me and we could have everything we wanted.

Q. Did you pay any expense in surveying, making deeds to said land to Jim Walker and Whit Koonce?

A. No.

Q. State whether you and Aunt Cherry, your wife, went to live with Jim Walker and Annie?

A. Yes, but he drove me off and was not good to me--I couldn't stay there.

Q. Was that before or after he came back from Carroll County?

A. It was after he came back.

Q. How does Whit and his family treat you?

A. Good.

Q. Do they treat you all right--kind to you?

A. Yes.

Q. Whose place is it that you live at now?

A. Mine.

Q. Who lives with you?

A. Whit and his family.

Q. State how Burnett has treated you in the last few years?

A. Bad, last year he cursed me and called me a dam fool.

Q. Does he ever come to see you now?

A. No.

Q. Was you with Burnett and the surveyor the day the land was run off?

A. They carried me down there in a buggy, I don't know who drove it.

Q. State whether you ever signed a note for Mr. Burnett for him to get money at Jackson?

A. Yes, he came to me to do that.

WHIT KOONCE.

The next witness introduced by complainant was Whit Koonce, age 49 years.

Q. Are you one of the defendants of the Solomon Koonce?

A. Yes.

Q. Where are you living?

A. With my father as I have always lived with him and never left home.

Q. What size family have you?

A. Wife and three children, the oldest 16, 14 and 4.

Q. How many children did your father have?

A. Six.

Q. Name them?

A. Charlie, Ned, Liza, Ike, Annie and myself.

Q. Who is the oldest?

A. Charlie?

Q. Who is the youngest?

A. I am.

Q. Who is the next youngest?

A. Liza.

Q. You remember the time Mr. Burnett and Mr. Cox went down to your place and running a dividing line through the 95 acres of land, laying you off half and Jim Walker off half?

A. Yes sir.

Q. When did you first know the land was to be divided?

A. I didnt never hear nothing about it. I saw Mr. Burnett and some other parties up there in the filed and I went up there and Mr. Burnett was fixing to have the land run off.

Q. Had you ever heard anything about it before that morning?

A. No.

Q. Who was up there?

A. Mr. Burnett and a surveyor, I forget his name, I think Mr. Cox

and one or two other boys.

Q. What did he tell you to do?

A. Hitch up to the buggy and bring the old man (Pap) out there.

Q. Did you do that?

A. Yes I did.

Q. You carried him out there in a buggy?

A. He had a long spell of sickness and wasnt able to walk.

Q. Had Mr. Burnett ever said anything to you in any way whatever about your fathers condition?

A. No.

Q. Now tell just what was done there that day?

A. Well, first run all around the tract of land by Charlies and Ikes and Tom Postons house and then run a dividing line through it giving about-- little over 46 acres and giving Whit the remainder-- a little over 46 acres.

Q. Who was directing and bossing the whole thing that day?

A. Mr. Burnett.

Q. Did you or any of your fathers son or anybody else have anything to say about the matter except Mr. Burnett?

A. No.

Q. After the land was run off what did you do?

A. Mr. Burnett took Mr. Cox and went up to his house to dinner told me to get Pap and for me and my wife to go down to Maury City to do some writing about the land. He didnt tell me what . We went and Mr. Burnett told us what he wanted done and Squire Neal wrote the deed to me for Pap and Mammy to sign. Mr. Burnett signed their names to the deed and Pap made his mark, Mammy wasnt there.

Q. Well what become of the deed?

A. I dont know, Mr. Burnett took charge of them.

Q. Well, did he ask you to do anything?

A. Yes, he said Pap owed him a big amount of money-- that he had a mortgage on all this land to secure a note and said Pap wanted me and Jim to make a deed to the land and secure the payment of the debt and that I would have to give a mortgage

on my part of the land to secure about over \$2405. that would be my part to pay and that he would give me as long as I wanted to pay it in. Said Pap had got too old and feeble to do anything or to look after it and he had got him to make that sort of arrangement and that Jim Walker part of the deed would be about \$1900. and that Jim was going to give a mortgage on his part to secure the \$1900.-- and that he would give us both as much time as we wanted to pay it in. That it was the best thing the old man could do as him and Hunt Cherry was very old and feeble and had no more cares so he took mine and Jims note for the deed and the mortgage on the land.

Q. Who paid the expense of the surveyor and the writings the deeds?

A. Mr. Burnett did.

Q. Are you opposite in any way?

A. No sir.

Q. Did you ever take possession of the land?

A. No.

Q. Where do you live?

A. With my father like I have all my life.

Q. Did he ever turn you over the tract of land deeded you?

A. No.

Q. Have you ever paid him any rent on the land since that time?

A. No.

Q. Have you ever paid him anything for support on the contract that you and Jim Walker signed that day ?

A. No.

Q. Did you ever pay any part of that \$2400. note?

A. No. Mr. Burnett traded the note to the Alamo Bank and I paid the Bank interest I think for two years and last May Mr. Booth the Trustee sold the land and Mr. Burnett bought it and Mr. Booth made him a deed to the place. That is the place where Pap and

I are now living and have lived all my life.

Q. Who took possession of the deed that your father made you at Maury City?

A. Mr. Burnett did.

Q. What did he do with it?

A. I dont know.

Q. Have you the deed?

A. No sir, pap as it were did have it and sent it to Mr. Poston.

Q. Did you ever know of your father borrowing any money from S.H. Burnett?

A. No sir.

Q. Did you ever him spaek of borrowing any money from him?

A. No sir.

Q. Are you educated?

A. Some what.

Q. Can you read and write?

A. Very well.

Q. Did you ever see any paper which you father had signed by mark or otherwise?

A. I dont remember that I did. Mr. Burnett come over and wanted Pap to go his security on a note to the Jackson Bank for \$ six or eight hundred dollars, but I am not sure whether he agreed to do it or not.

Q. What kind of land of the 250 acre tract that Mr. Koonce give your father?

A. It was very fine land, not much ever cleared at the time, but had very fine timber on it.

Q. Did your father build on it?

A. Yes sir, built a double log house with eight feet passage between and years after we cut timber and weather boarded it.

Q. Who bulit the house?

A. Pap and my older brother.

Q. Where did they get the lumber to build it?

A. They cut it off of the land, board, trees and all and done the work.

Q. Has he ever improved that house any?

A. No sir.

Q. What part of the house does he occupy?

A. Him and Mammy occupied the west room and we boys occupied the east that me and my wife, we have a good room attached.

Q. Did you father ever build any barns or make any other improvements on the land?

A. No, except the log stables covered with boards.

Q. Did he ever buy any machinery at any time?

A. No, except away back he bought a binder and mower from Mr. Robertson.

Q. What kind of farm did your father own when you were growing up to be a boy?

A. It was very fine, said to be one of the best farm in the country.

Q. What did your father raise on it?

A. He raised, corn, sotton, wheat and oats.

Q. Did he ever have corn to sell?

A. Yes most always had corn to sell.

Q. What about cotton?

A. Well always made cotton, more some years than others, sometimes had oats to sell.

Q. Ever have any wheat to sell?

A. I dont remember about that.

Q. What kind of stock if any did he raise?

A. Well he raised colts, cattle and hogs.

Q. State whether he ever had cattle, hogs or colts to sell?

A. Yes sir he had to brood mares, sold colts from them, most always had hogs to sell and two or three yearlings every year.

Q. Did he ever give any you children any money?

A. No, that I ever heard of, unless it was a dollar or two at a time.

Q. Did he ever give his daughters anything?

A. He sent her one year to Roger Williams school at Nashville.

Q. Did you ever know of him contracting any debts anywhere?

A. None except that binder debt, yes he did buy a horse for Ike from Mr. Childress and gave a note for \$200.00 for Ike and he had to pay it.

Q. What was your fathers condition physically, mentally at the time he executed the deeds on the 28th of April 1920?

A. Well he had been in a very bad fix for years and just a few weeks before the land was run off he had a very bad spell of sickness that lasted him about three weeks, in fact we all thought he was going to die and sent for the children to come in and has been very feeble every since and long before.

Q. What was his mental condition?

A. It hasnt been good for a long time, he cant remember nothing and repeats so often.

Q. What is his age?

A. The best we can get it, he is 100 years old now.

Q. Who has been keeping him up, boarding him and clothing him since he left Jim Walkers?

A. I have.

Q. Has Jim Walker ever contributed one cent to him since he has been at your house?

A. No sir.

Q. Who paid the funeral bills and doctors bill of Aunt Cherry when she died?

A. Jim Walker and myself. I paid \$46.00 I think I lacked a little paying half of it. Jim Walker paid the other half.

CROSS EXAMINATION BY MR. JERMAN.

Q. You went into possession of your tract of land immediately after the land was divided, didnt you?

A. No sir. He was on the place at the time. I lived with my father-- all my life--I never did have possession of the place--I lived there and work it now just like I always did.

Q. You have been in possession every since 1920 havent you, holding on to your deed?

A. I have been living there every since--just like I did before but Pap says it is his land and not mine.

Q. You knew why you was making this mortgage to secure Burnetts debt of \$2405.?

A. Yes I knew I was making it for giving a mortgage on the land that pap deeded to me. Mr. Burnett said that if I paid the debt off the land would be mine.

Q. You tried to borrow money on this land to satisfy this mortgage?

A. Yes sir, I tried to borrow money on it but everybody I talked to about it said that on account of the life estate and right against they couldnt.

Q. Land on the mortgage was finnally foreclosed, wasnt it?

A. Yes sir I was there when it was sold.

Q. Where has your Pap been living since he left Jim Walkers?

A. With me or me with him just as you may call it.

Q. Has he been paying you any board?

A. No sir.

Q. Have you paid the taxes since 1920?

○ A. I paid them one year.

Q. The Bank of Alamo held your mortgage when it was foreclosed, did it not?

A. Yes sir.

Q. You say you paid interest on the \$2405. two years, to whom did you pay this?

A. To the Bank of Alamo.

Q. You got the money from Oscar Birmingham to pay this didnt you?

A. Yes sir.

Q. Didnt Uncle Sol buy hay and corn form Mr. Burnett?

A. No sir we raised plenty of that.

ADA MOORE

Next witness for complainant Ada Moore wife of A.P. Moore, after being duly sworn testified as follows:

Q. How far did you live from the complainant on the 28th of April 1920?

A. Close by, some four or five hundred yards.

Q. Did you see him often about that time?

A. Yes every day or two, he had a hard spell of sickness and we thought he was going to die and I went every day nearly.

Q. How long was this before the day the land was divided between Whit Koonce and Jim Walker?

A. About two or three weeks.

Q. What was the matter with him?

A. He had Flu and fever.

Q. What was his mental condition at that time?

A. It was no good, he would not know me sometimes.

Q. How long has he been in a feeble, weak condition?

A. Several years before that.

Q. Did you ever hear of complainant owing Mr. Burnett any money for anything?

A. No sir, he didnt owe anything so he said.

Q. Did you ever see Mr. Burnett go there and talk with him?

A. Ye s sir, I have been there when Mr. Burnett would come in and go in his room and shut the door.

Q. How long would he stay?

A. Well some little bit and sometimes not so long.

Q. State whether his mental condition is better or worse now than it was then at the time the land was divided between ~~Jim~~ Jim and Whit?

A. It is about the same, someone has stayed with him/ all the time he cant go anywhere by himself, he has not been able to go by himself for years.

Q. Has he been able to do anything since Jim and Annie Married?

A. No sir. Well for a few years after they married he could do a little work in good weather.

MABEL KOONCE.

The next witness for complainant Mable Koonce wife of Whit Koonce being duly sworn testifies as follows:

Q. While Uncle Sol was staying at your house, after he left Jim Walkers, did S.H. Burnett ever come to see him?

A. Yes sir.

Q. Was he living at your house at the time the land was divided?

A. Yes sir.

Q. How did they act when he came there?

A. If they had any business to talk they always went out of doors or shut the door.

Q. Do you know what they talked about?

A. No sir.

Q. What condition was Uncle Sol in at that time?

○ A. Oh: he was very feeble, scrasely able to get about.

Q. Has he improved any.

A. No sir.

Q. Did S.H. Burnett come to see him often?

A. Yes sir ~~xxx~~ pretty often.

Q. When he come to see him would they sit and talk in your room or in Uncle Sols room?

A. Always in Paps room unless they went out in the yard.

Q. State whether Mr. Burnett continued to visit Uncle Sol after he made the deeds to your husband and Jim Walker?

A. No sir he did not.

○ Q. State whete if you know whether Uncle Sol ever borrowed any money from Mr. Burnett?

A. If he did I never heard of it.

Q. Did you ever know of him buying any flour, wheat, corn, hay or anything else from Mr. Burnett?

A. No sir I never heard of it.

Q. State whether Uncle Sol was very fond of Mr. Burnett before the deeds were made to Whit and Jim?

A. Yes sir he thought there was nobody like him.

Q. When did you first hear that the land was going to be divided between Whit and Jim Walker?

A. I never heard it at all, the first thing I knew I saw Mr. Burnett and the surveyor fixing to run the line.

Q. And you read the right?

A. Yes sir.

Q. State whether during last year you saw Mr. Burnett at the corner of your yard talking to Uncle Sol at the big gate?

A. I did.

Q. What was he saying to him?

A. I dont know- when Pap come in the yard he was crying, said that Burnett was cursing him, called him a dam fool, and he couldnt sleep that night--crying all the night.

Q. How far does Mr. Burnetts line run from your house?

A. Thirty or forty yards.

IKE

CROSS EXAMINATION BY MR. JERMAN.

of Ike Homan

Q. Who knew they were going to run the line, didnt you Ike?

A. No sir I didnt know it.

Q. Your father had deeded you a tract of land, didnt he?

A. Yes sir.

Q. That tract he conveyed you had a mortgage on it when he made the deed, didnt it?

A. Yes sir.

Q. Your father borrowed \$600.00 from Oscar Birmingham, didnt he and made the mortgage on the land to secure it, didnt he?

A. Yes sir and I paid him back.

Q. This was in 1912, wasnt it?

○ A. I dont know ~~exactly~~ somewhere about that.

Q. And the land he made mortgage on was the same land that he divided between you and Whit, wasnt it?

A. Yes sir.

Q. Did your father ever give you and the children any money?

A. No sir.

Q. Has he ever spent any money on improvements in the way of house and barn in the last thirty years?

A. No.

○ Q. Who seemed to be directing and managing and surving and dictating the running off of the lines?

A. Mr. Burnett.

Q. What was your fathers condition 28th of April 1920 when he made the deed to Jim Walker and Whit Koonce-- ~~am~~ I mean physical and mental?

A. He was in very bad condition, he hasnt been right in several years very Meeble--not able to get about and do any work and just two or three weeks before he made these deeds he had a hard spell of sickness and everybody thought he was going to die in fact we sent for all the children and his mental condition was bad as well as his physical condition.

he couldnt remember any thing talked at random condition then like it is now.

Charlie Koonts
Charley Koonts

Q. Did you ever hear of him contracting any debts anywhere?

A. No sir.

Q. Did you ever hear of him owing Mr. Burnett anything?

A. No, he id to Ike to Mr. Birmingham a debt of five or six hundred dollars but Ike paid that back and then he bought a horse from Mr. Childress for Ned or he went Neds security and had it to pay, that is the only two debts that he had to pay for his children.

Q. State whether he always made good crops, corn and cotton?

A. As good as anybody in the neighborhood, nobody had any better land and we worked it well.

Q. Did you ever hear of him turning the place over to Whit after the deed was made?

A. No sir he did not do it.

Q. Did you know what was going to be done when you say them out there running the lane that day they were surveying the land?

A. No sir, I never heard of them having a deed until sometime afterwards.

Q. What was your fathers mental and physical condition that day?

A. It was bad, he was so weak he couldnt walk, had to be carried in a buggy, had no recollection.

Q. What was his condition that day, mentally and physically as compared with it to day?

A. About the same.

Q. How long has he been in his present condition?

A. Oh: eight or ten years, in fact every since Annie married, he hasnt been able to do anything.

Q.

A.P.MOORE.

Examination of A.P.Moore witness for complainant, after being duly sworn testified as follows:

Q. Are you related in any way to the complainant Solomon Koonce, if so, how?

A. I married his neice, she was a widow when I married her.

Q. Was you living on a part of the two hundred fifty acres of land that Isaac Koonce gave the complainant?

A. Yes sir.

Q. How far was you living from the complainant at the time the 95 acres were divided between Whit and Jim Walker?

A. Four or five Hundred yards.

Q. Was you present when the lines was run on the 28th day of April 1920?

A. Well I saw them down there and I did not know what they were doing and I went where they were at work.

Q. Who was at work?

A. Mr. Sam Burnett and the surveyor.

Q. Did you know anything about the land going to be dived or Uncle was going to make Whit and Jim Walker deeds to it?

A. No sir, I went down there but no one told me what they were going to do and I never heard of the deed transaction for two or three weeks after it was done.

Q. Did you ever hear from any source that the complainant owed Mr. Burnett any money for anything?

A. No sir, I didnt think he owed anything to anybody.

Q. Are you educated?

A. Yes sir, pretty well.

Q. Are you guardian for step children?

A. Yes sir.

Q. Does your wifes land join the 95 acre tract in dispute?

A. Yes sir.

Q. Do you remember the spell of sickness that the complainant had just before he made these deeds to Whit and Jim Walker?

A. Yes sir, very well, we thought he was going to die and sent for all the children and grandchildren.

Q. What was his condition before he had that spell of sickness?

A. Well he has been in a mighty feeble condition for several years before that, he did not have much recollection, his health was bad and he could not go about by himself and the family would not let him go out alone, he was too feeble.

Q. What was his mental and physical condition after that spell of sickness?

A. It was worse. He has been all the time like he is now.

Q. What was his condition on the day the land was divided by Mr. Burnett and Mr. Cox as compared today?

A. It is about the same, he can't remember very well and sometimes don't know me at first, his mind has not been good since.

Q. How long has it been that he was too weak and feeble to do any work?

A. Not since Jim Walker and Annie married, he could not go around by himself.

Q. Did you ever hear of him having any trouble or misunderstanding with any of his children?

A. No sir he was friendly with all of them, go to see them.

Q. How did he like Mr. Burnett?

A. Oh well he thought more of him than anyone, he went to see him about everything, he relied on Mr. Burnett about all business.

Q. Are you on good terms with Mr. Burnett?

A. Yes sir we always got along fine.

Q. What kind of farmer was Uncle Sol?

A. He was a good farmer, got along well.

CROSS EXAMINATION OF THE DEFENDANT S.H.BURNETT BY THE

COMPLAINANT.

Which is conclusion that his alleged debt is fictitious

Q.1. Who wrote the article of agreement that Jim Walker and Whit Koonce signed the day the deeds were made to them to the land in controversy?

A. I did at Jim Walkers suggestion.

Q. You were always a close friend to complainant?

A. Yes I went to see him often and set on the side of the bed and talk to him. I looked on him as a father.

Q. He had great confidence in you, didnt he?

A. Yes sir.

Q. What interest did you make him pay you?

A. Just eight per cent like the banks make me pay.

Q. Did you calculate and put in eight per cent in the \$1500. note? note that he gave you on the last settlement 1912?

A. Yes sir.

Q. When was that note due?

A. The 15th of November 1913.

Q. How long had that note been past due when the deeds were made to Jim Walker and Whit Koonce?

A. Six years and seven months.

Q. (By the Court) Wasnt that note barred by the Statutes of Limitation when these deeds were made?

A. Yes sir.

Q. (By Solicitors of Complainant) What did he owe you the \$1500.00 for?

A. Borrowed money, corn, hay, wheat and provisions that I furnished him.

Q. Have you any book or memorandum that was made at the time you furnished him?

A. No.

Q. How much corn did you furnish him?

A. I dont know.

Q. How much hay did you furnish him?

A. I dont remember.

Q. How much flour did you furnish him?

A. Oh: I cant tell now.

Q. How much provsions did you furnish him?

A. I cant tell you, but I furnished it.

Q. Cant you tell how much you furnished him each year?

A. No.

Q. What year did you furnish him?

A. Well I cant tell that.

Q. You can give the amount of corn, hay, flour, meat or provisions you furnished the complainant in one year, cant you?

A. No.

Q. You cant tell the amount of money you let him have any year, can you?

A. No sir. I just let him have money when he wanted it.

Q. Did any person ever see you let him have any money?

A. Not that I know of.

Q. Did you take his note for it?

A. Sometimes I would and sometimes I would not.

Q. How many notes did you ever take from him in all your business transactions?

A. I cant tell you, I can tell you this if he come to me for money and I did not have it I would go and borrow it and let him have it?

Q. How many times did you do this?

A. I dont know.

Q. Did you have anybody to witness a note for you?

A. Yes one, S.D. Booth.

Q. The defendant S.A. Booth is your cousin and close friend is he not?

A. Yes cousin by marriage.

Q. You have had the defendant Jim Walker living in your yard for the last two years have you not?

A. Yes.

Q. Cox the surveyor eat dinner at your house the day he surveyed the land didnt he and come to your house that morning?

A. Yes.

Q. You had at the time the deeds were made to Jim and Whit your land mortgaged for about \$3400.00?

A. Yes.

Q. How much did you owe the Citizens Bank at Maury City the 1st of December 1913?

A. I dont know.

Q. Did^{nt} you owe that bank at that date and have a note of complainant as collateral security in that bank?

A. I dont know

Q. What did you do with the notes that you took from Jim Walker and Whit Keonce that you claim cover the indebtedness that complainant owed you?

A. I let the Bank of Alamo have them, I owed the Bank about \$4000.00.

Q. Are the statements in your answer to complainants bill as to his mental and physical condition true?

A. Absolutely true.

Q. How close do you live to complainant.

A. A short distance.

The defendant Burnett admits in his sworn answer that it was he who suggested to the complaint to make the deeds to Whit and Jim, Rec. p. 23..

The defendant says in his sworn answer at the time of the execution of the deeds to the defendants Whitt Koonce and Jim Walker; the complaint as he states, is very old, very feeble and uneducated, and when he states in his bill that he was not indebted to this defendant in these deeds that were executed, he might be excused on the grounds that his memory is poor, and that his mind is at fault. Rec. p. 22

The defendant Walker makes the same admittance in his answer that the old man was weak physically and mentally .

Ned Koonce a witness for the defendant on cross examination that his father had been in very feeble condition physically & Mentally for several years Rec p. 154.

THERE WAS NO EFFORT WHATSOEVER TO SHOW THAT THE COMPLAINT WAS CAPABLE TO CONTRACT AT THE TIME THE DEEDS WERE MADE AND SEVEN WITNESSES ON THE CONTRARY STATE THAT HE WAS NOT.

Whitt Koonce Rec p 94 -100

Charlie Koonce Rec p. 112 -114

A.P. Moore Rec p 103 -104

Ada Moore. Rec p 105 -106

Ike Koonce Rec p 107 - 109

Mable Koonce Rec p. 101 - 102

Ned Koonce Rec p 154

THE COMPLAIANT INSIST THAT THERE WAS NO DELIVERY OF SAID DEED

The complaiant did not have charge or controle of said deed and never directed any one to deliver to Whitt Koonce or Jim Walker .

Rec p 95

The defendent Whitt Koonce said no deed was ever delivered to him that he never took posession of said land and never had possession of the deed.

Rec. p 95- 96 & there is no controciction on this point

The deeds are void for uncertainty and no land in circles in the calls and no State or County in which it is situated

No failure or consideration

*The original deed and the
contract between Whitt Koonce
+ Jim Walker attached to
the case*

THE QUESTIONS THAT ARE RAISED IN THIS RECORD ARE TO WELL SETTLED BY THE COURTS OF THE COUNTRY TO REQUIRE A PRODUCTION OF THE AUTHORITY TO SETAIN THEM.

I

The 1st question that is raised is the *integrity* and incapacity of the complanant to contract, which is a question of fact

2

IS, DID THE COMPLANANT OWE THE DEFENDENT BURNETT \$4.000.00 WHEN THE DEEDS WERE MADE; A QUESTION OF FACT.

3

Was the complanant over reached by false and *fraudulent representations* made by defendent Burnett. A question of fact.

4

Was there a delivery of the deeds; a mixed question.

See first sneed 190 which holds; an authority cited (even if a deed be made and delivered to the register, with out more is no delivery.

In a case of gift as it appears in this case on the face of the deed (it must clearely appear that the dona has reliquised his controle and the donee acquired all dominion and controle over it.

24 Pickle .

108 Tenn. 398

A.E. 14th volum page 125

W.F. Poston

W.F. Poston SOLICATOR.